146 U.S. 183

RECORD, CASE No. 15,037.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No., 1067.

CHARLES E. COOK, APPELLANT,

vs.

COLDEN A. HART, SHERIFF OF DODGE COUNTY, WISCONSIN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN.

FILED MAY 4, 1892.

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1 Circuit Court of the United States, Eastern District of Wisconsin.

UNITED STATES OF AMERICA, *Eastern District of Wisconsin,* } *ss:*

At a stated term of the circuit court of the United States for the eastern district of Wisconsin, begun and held according to law at the city of Milwaukee, in said district, on the first Monday (being the fourth day) of January, A. D. 1892—present and presiding, the Honorable James G. Jenkins, district judge—among other, the following proceedings were had, to wit:

In the Matter of the Petition of CHARLES E. COOK for a Writ of *Habeas Corpus.*

Be it remembered that on the twenty-third day of said term, to wit, on the 13th day of February, A. D. 1892, came the petitioner, by his counsel, Messrs. Aldrich, Payne and Washburn, and presented to the court his petition in writing, as herein filed, as follows, to wit:

To the honorable the judges of the circuit court of the United States for the eastern district of Wisconsin:

The petition of Charles E. Cook respectfully shows that he was, on the twentieth day of June, A. D. 1890, and had been for many years prior thereto continuously and ever since said date now is a citizen of the United States and of the State of Illinois, domiciled and residing in the city of Chicago, in said State.

That he has been and is now imprisoned and restrained of his liberty by Colden A. Hart, sheriff of Dodge county, State of Wisconsin, at Juneau, in said county and State.

2 That your petitioner is thus imprisoned and held in custody under color of the authority of the Constitution and laws of the United States relating to the return of fugitives from justice to the State or Territory from which they fled.

That the said Colden A. Hart claims to hold in custody and imprison your petitioner under and by virtue of certain warrant and extradition proceedings; which warrant and proceedings were in the words and figures following, to wit:

UNITED STATES OF AMERICA, *The State of Wisconsin.* }

George W. Peck, governor, to his excellency the governor of the State of Illinois:

Whereas it appears by the annexed papers, which I certify to be authentic, that Charles E. Cook stands charged by affidavit with the crime of illegal banking committed in the county of Dodge, in this State, and that he has fled from the justice of this State and taken refuge in the State of Illinois:

Now, therefore, pursuant to the provisions of the Constitution and the laws of the United States in such case made and provided, I do hereby require that the said Charles E. Cook be apprehended and delivered to Colden A. Hart, who is duly authorized to receive and convey him to the State of Wisconsin, here to be dealt with according to law.

In testimony whereof I have hereunto set my hand and [SEAL.] caused the great seal of the State of Wisconsin to be affixed.

Done at the city of Madison this ninth day of March, in the year of our Lord one thousand eight hundred and ninety-one.

GEO. W. PECK.

By the governor:

T. J. CUNNINGHAM,
Secretary of State.

3 STATE OF WISCONSIN, } ss:
County of Dodge, }

I, P. G. Lewis, district attorney for said county, hereby make application for a requisition for Charles E. Cook.

And I hereby certify that the full name of the person for whom extradition is asked is Charles E. Cook, and the name of the agent proposed to receive and convey the said Charles E. Cook to this county is Colden A. Hart; that in my opinion the ends of public justice require that the said Charles E. Cook be brought to this State for trial at the public expense; that I believe that I have sufficient evidence to secure the conviction of said Charles E. Cook; that said Colden A. Hart, the person named as agent, is the sheriff of said county of Dodge and is a proper person, and that he has no private interest in the arrest of said Charles E. Cook.

That on or about the third day of July, A. D. 1890, I made application for a requisition on the governor of the State of Illinois for said Charles E. Cook, who was at that time at the city of Chicago, in said State of Illinois; said requisition was granted and the governor of said State of Illinois thereupon, on or about the 5th day of July, A. D. 1890, issued his warrant for the arrest of said Charles E. Cook and immediately, to wit, on the 5th or 6th day of July, A. D. 1890, delivered the same to the sheriff of Cook county, in the said State of Illinois, but before the same was executed the said Charles E. Cook fled from said city of Chicago and said State of Illinois and could not be found, although diligent search was made for him; that in order to avoid arrest said Charles E. Cook fled to La Porte, in the State of Indiana, from there to Boston, in the State of Massachusetts, and from there to Europe, where he remained until a short time ago when he returned to said city of Chicago, in said State of Illinois, where he now is, as I am informed and be-

4 lieve, and because he could not be found and has not been arrested for this offense I now make this application for a requisition; that said Charles E. Cook is not known to be under either civil or criminal arrest in the said State of Illinois or elsewhere;

that this application is not made for the purpose of enforcing the collection of a debt or for any private purpose whatever, and if the requisition applied for be granted the criminal proceedings shall not be used for any of such objects.

That said Charles E. Cook is charged with illegal and unauthorized banking and fraudulently receiving deposits at the city of Juneau, in the county of Dodge and State of Wisconsin, in the year 1890, as more fully appears from the complaint, a copy of which is hereto attached, under section No. 4541 of the Revised Statutes of the State of Wisconsin.

That said Charles E. Cook is a fugitive from justice and has fled from the justice of the State of Wisconsin and avoided arrest up to this time.

Witness my hand, at the city of Juneau, in said county of Dodge, this 5th day of March, A. D. 1891.

P. G. LEWIS,
District Attorney for Dodge County, Wisconsin.

STATE OF WISCONSIN, } ss:
County of Dodge, }

George W. Morse, Thomas A. McCallon, C. A. Christiansen, and T. J. McCallom, being each severally sworn, each for himself deposes and says that he is a resident of the city of Juneau, in said county, and has been such resident for more than five years last past; that he makes this affidavit to be used on an application for a requisition for one Charles E. Cook for illegal and unauthorized banking at the said city of Juneau.

5 That said Charles E. Cook and one Frank Leake did, on or about the 7th day of May, 1889, open an office or place of business at Juneau aforesaid, in said county of Dodge, and called and styled such office or place of business the "Bank of Juneau," and immediately entered upon and engaged in a general banking, brokerage, exchange, and deposit business, having a pretended capital of ten thousand dollars, and continued in such business soliciting and receiving deposits and calling their institution a bank up to and including the 20th day of June, 1890, when said bank closed its doors; that during all of said time said Charles E. Cook had the general supervision of the business of said bank and was the principal owner thereof, and all business therein was transacted by him personally or by his direction by one G. D. Richardson, who was acting as his agent and as the agent of said Leake; that said Cook frequently visited said bank and well knew the condition thereof at all times; that from the books of said so-called banking concern it now appears and the fact is that from the 6th day of January, 1890, to the 20th day of June, 1890, the said Charles E. Cook, by the inducement and pretenses held out by the said bank, received deposits of money, notes, bills, and paper circulating as money, the property of citizens of said county, to the amount and of the value of $25,000.00; that said amount was taken, received, and held on deposit in said bank by said Charles E. Cook and said Leake by the

express order and direction of said Cook, and that such amount of deposits appears on said 20th day of June, 1890, as due depositors upon the books of said bank, and the same is now due such depositors and no part thereof has been paid; that an examination of the books of said bank shows and the fact is that at the time of the closing of its doors on the 20th day of June, 1890, its assets consisted of cash, $3,048.00, and securities to the amount of $2,000.00; that said Charles E. Cook, while receiving the deposits as aforesaid, drew out of the said bank all of the pretended capital stock, if any was ever
6 paid in, and also all of the deposits of said citizens doing business thereat, except the aforesaid sum of $5,048.00 in money and securities which was in the bank at the time it closed; that on or about the 23rd day of June, 1890, said Cook and Leake made an assignment of their property for the benefit of their creditors; that besides the liabilities of said bank to its depositors it was at and before the time of its closing as aforesaid and still is indebted on notes given by said Cook to the amount of several thousand dollars; that deponents have each examined into the financial condition of said bank and of said Cook and Leake and each of them, and from their own books and business it clearly appears and the fact is that said Charles E. Cook and Frank Leake and each of them, as well as the said "Bank of Juneau," were on the 6th day of January, 1890, and ever since have been and now are insolvent and had good reason to know and said Cook and Leake did each of them know that they were and each of them and the said bank was on said 6th day of January, 1890, and ever since have been unsafe and insolvent; that the aforesaid insolvency was well known to said Cook ever since said 6th day of January, 1890; that on the 20th day of June, 1890, at about four o'clock in the afternoon of that day, at said county of Dodge, said Cook and Leake did, as such bankers, receive a deposit in said bank from one Herman Becker to the amount of $175.00 in money; that said deposit was received by the order and direction of said Charles E. Cook.

That at the time of receiving said deposit said Charles E. Cook well knew and had good reason to know that he, the said Cook, the said Leake, the firm of Charles E. Cook and Company, and said bank were all insolvent and unsafe.

GEO. W. MORSE.
T. A. McCALLON.
C. A. CHRISTIANSEN.
T. J. McCALLON.

Subscribed and sworn to before me this 5th day of March, A. D. 1891.

THEO. P. HEMMY,
Justice of the Peace.

7 STATE OF WISCONSIN, } ss:
County of Dodge, }

I, Theodore P. Hemmy, the justice of the peace before whom the foregoing affidavit was taken, being a justice of the peace in and

for the city of Juneau, in said county, hereby certify that I am well acquainted with George W. Morse, Thomas A. McCallon, C. A. Christiansen, and T. J. McCallon, the persons who made said affidavit, and know that they are persons to be believed.

Witness my hand at Juneau, in said county, this 5th day of March, A. D. 1891.

THEO. P. HEMMY,
Justice of the Peace.

STATE OF WISCONSIN, } ss:
County of Dodge, }

OFFICE OF CLERK OF CIRCUIT COURT.

I, Geo. W. Morse, clerk of the circuit court of the county of Dodge, in the State of Wiconsin, the said court being a court of record and having a seal, do hereby certify that Theo. P. Hemmy, Esquire, whose name appears subscribed to the annexed instrument, was at the date thereof a justice of the peace of said county, duly elected and qualified and empowered by the laws of said State to administer oaths and take acknowledgements of deeds, and that to his acts and attestations as such full faith and credit are and ought to be given in the court and out. I further certify that I verily believe said signature purporting to be his is genuine, and that said instrument is executed and acknowledged according to the laws of said State.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Juneau, in said county and State, on said 5th day of March, A. D. 1891.

GEO. W. MORSE,
Clerk of Circuit Court as Aforesaid.

8 STATE OF WISCONSIN, } ss:
County of Dodge, }

George W. Morse, being duly sworn, says that he is a resident of said county and is the complaining witness in the case of the State of Wisconsin against Charles E. Cook for illegal and unauthorized banking; that he makes this affidavit to be used on an application for a requisition for said Charles E. Cook; that the application is made in good faith for the sole purpose of punishing said Cook, and that he does not desire or expect to use the prosecution for the purpose of collecting a debt or for any private purpose and will not directly or indirectly use the same for any of said purposes.

GEO. W. MORSE.

Subscribed and sworn to before me this 5th day of March, A. D. 1891.

THEO. P. HEMMY,
Justice of the Peace.

STATE OF WISCONSIN, } ss:
County of Dodge, }

I, Theodore P. Hemmy, the justice of the peace before whom the foregoing affidavit was taken, being a justice of the peace in and for the city of Juneau, in said county, hereby certify that I am well acquainted with George W. Morse, the person who made the said affidavit, and know that he is a person to be believed.

Witness my hand, at Juneau, in said county, this 5th day of March, A. D. 1891.

THEO. P. HEMMY,
Justice of the Peace.

9 STATE OF WISCONSIN, } ss:
County of Dodge, }

OFFICE OF CLERK OF CIRCUIT COURT.

I, Geo. W. Morse, clerk of the circuit court of the county of Dodge, in the State of Wisconsin, the said court being a court of record and having a seal, do hereby certify that Theo. P. Hemmy, Esquire, whose name appears subscribed to the annexed instrument, was, at the date thereof, a justice of the peace of said county duly elected and qualified and empowered by the laws of said State to administer oaths and take acknowledgements of deeds, and that to his acts and attestations as such full faith and credit are and ought to be given in court and out. I further certify that I verily believe said signature purporting to be his is genuine, and that said instrument is executed and acknowledged according to the laws of said State.

In witness whereof I have hereunto set my hand and
[SEAL.] affixed the seal of said court, at Juneau, in said county and State, on said 5th day of March, A. D. 1891.

GEO. W. MORSE,
Clerk of Circuit Court as Aforesaid.

STATE OF WISCONSIN, } ss:
County of Dodge, }

Bernard Hauser, being duly sworn, says that during all of the year 1890 he was the sheriff of said county; that on or about the third day of July, 1890, a requisition was issued by the governor of the State of Wisconsin for Charles E. Cook for illegal banking at Juneau, Wisconsin, and this deponent was appointed agent to receive and convey said Charles E. Cook to this State; that said Cook was then at the city of Chicago, in the State of Illinois; that the governor of said State of Illinois upon the 5th day of July, 1890, made and issued an order for the arrest of said Cook to be delivered to
10 deponent, as such agent, which said order was immediately delivered to the sheriff of Cook county, in the State of Illinois; that this deponent made diligent search for said Cook in said city of Chicago, but was unable to find him. Deponent learned that said Cook had been informed of said proceedings and had fled from

said city. Soon afterward deponent again visited said city of Chicago and made diligent search for said Cook, but was unable to find him. On or about the 23rd day of July, 1890, deponent again and for the third time visited said city of Chicago and searched for said Cook and learned that he had left the said city and gone to La Porte, in the State of Indiana; that deponent immediately went to the said last above-named place and learned that Cook had been there and had gone from there a short time before deponent arrived, and deponent was unable to get any further trace of said Charles E. Cook, although he made diligent effort to find him; that all of deponent's acts in searching for said Charles E. Cook as aforesaid were done under the direction and by the order of P. G. Lewis, who was then and still is the district attorney for Dodge county, Wisconsin; and deponent further says that he knows that said Charles E. Cook was at said times and now is a fugitive from justice; and deponent further says that he makes this affidavit to be used upon an application for a requisition for said Charles E. Cook.

B. HAUSER.

Subscribed and sworn to before me this 5th day of March, A. D. 1891.

THEO. P. HEMMY,
Justice of the Peace.

STATE OF WISCONSIN, } ss:
County of Dodge, }

I, Theodore P. Hemmy, the justice of the peace before whom the foregoing affidavit was taken, being a justice of the peace in and for said city of Juneau, in said county, hereby certify that I am well acquainted with Bernard Hauser, the person who made said affidavit, and know that he is a person to be believed.

Witness my hand, at Juneau, in said county, this 5th day of March, A. D. 1891.

THEO. P. HEMMY,
Justice of the Peace.

STATE OF WISCONSIN, } ss:
County of Dodge, }

OFFICE OF CLERK OF CIRCUIT COURT.

I, Geo. W. Morse, clerk of the circuit court of the county of Dodge, in the State of Wisconsin, the said court being a court of record and having a seal, hereby certify that Theo. P. Hemmy, Esquire, whose name appears subscribed to the annexed instrument, was at the date thereof a justice of the peace of said county, duly elected and qualified and empowered by the laws of said State to administer oaths and take acknowledgements of deeds, and that to his acts and attestations as such full faith and credit are and ought to be given in the court and out. I further certify that I verily believe said signature purporting to be his is genuine, and that said instrument is executed and acknowledged according to the laws of said State.

In witness whereof I have hereunto set my hand and
[SEAL.] affixed the seal of said court, at Juneau, in said county and State, on said 5th day of March, A. D. 1891.

GEO. W. MORSE,
Clerk of Circuit Court as Aforesaid.

12 STATE OF WISCONSIN, } ss:
County of Dodge, }

John Kelley, being duly sworn, says that he is a resident of said county and has been for more than twenty years last past; that he knows Charles E. Cook, and makes this affidavit to be used on an application for a requisition for him for illegal banking; that he believes said Charles E. Cook is now at the city of Chicago, in the State of Illinois; that on the 3rd day of March, 1891, he saw said Charles E. Cook at said city of Chicago; that at said time deponent had a conversation with said Charles E. Cook, and that said Charles E. Cook told deponent that he left the city of Chicago aforesaid in the month of July, 1890, and went to the city of Boston, Mass., and from there to Europe, and that the reason he did so was because the sheriff of Dodge county, Wisconsin, was after him to arrest him for illegal banking at Juneau, Wisconsin; and said Charles E. Cook further informed deponent that he, the said Cook, was insolvent, and that he did not have as much as two hundred and fifty dollars in the world, either in money or any other kind of property.

JOHN KELLEY.

Subscribed and sworn to before me this 5th day of March, A. D. 1891.

THEO. P. HEMMY,
Justice of the Peace.

13 STATE OF WISCONSIN, } ss:
County of Dodge, }

I, Theodore P. Hemmy, the justice of the peace before whom the foregoing affidavit was taken, being a justice of the peace in and for the city of Juneau, in said county, hereby certify that I am well acquainted with John Kelly, the person who made said affidavit, and know that he is a person to be believed.

Witness my hand, at Juneau, in said county, this 5th day of March, A. D. 1891.

THEO. P. HEMMY,
Justice of the Peace.

STATE OF WISCONSIN, } ss:
County of Dodge, }

OFFICE OF CLERK OF CIRCUIT COURT.

I, Geo. W. Morse, clerk of the circuit court of the county of Dodge, in the State of Wisconsin, the said court being a court of record and having a seal, do hereby certify that Theo. P. Hemmy, Esquire, whose name appears subscribed to the annexed instrument, was, at the date thereof, a justice of the peace of said county, duly elected

and qualified and empowered by the laws of said State to administer oaths and take acknowledgements of deeds, and that to his acts and attestations as such full faith and credit are and ought to be given in the court and out. I further certify that I verily believe said signature purporting to be his is genuine, and said instrument is executed and acknowledged according to the laws of said State.

In witness whereof I have hereunto set my hand and
[SEAL.] affixed the seal of said court, at Juneau, in said county and State, on said 5th day of March, A. D. 1891.

GEO. W. MORSE,
Clerk of Circuit Court as Aforesaid.

14 STATE OF WISCONSIN, } ss:
Dodge County, }

THE STATE OF WISCONSIN }
against }
CHARLES E. COOK. }

George W. Morse, being duly sworn, says that he is a resident of said county and has been for many years; that said Charles E. Cook and one Frank Leake did on or about the seventh day of May, A. D. 1889, open an office or place of business at the city of Juneau, in said county of Dodge and State of Wisconsin, and called and styled such office or place of business the Bank of Juneau, and immediately entered upon and engaged in a general banking, brokerage, exchange, and deposit business, having a pretended capital of ten thousand dollars, and continued in such business, soliciting and receiving deposits and calling their institution a bank, up to and including the 20th day of June, A. D. 1890, when said bank closed its doors; that all of said banking business was done as aforesaid and all of said deposits received as aforesaid at the city of Juneau, in said county of Dodge and State of Wisconsin; that during all of said time said Charles E. Cook was the principal owner of said bank, he owning nine-tenths ($\frac{9}{10}$) of said bank and the said Frank Leake owning one-tenth ($\frac{1}{10}$) thereof; that during all of said time said Charles E. Cook was an officer of said bank and had the general supervision of the business thereof, and all business of said bank was transacted by him personally or by his order and direction by one G. D. Richardson, who was acting as his agent; that from the 6th day of January, A. D. 1890, to and including the 20th day of June, A. D. 1890, at said city of Juneau, in said county of Dodge and State of Wisconsin, the said Charles E. Cook, by the inducements and pretenses held out by him and by said bank of Juneau, received and accepted on deposit from citizens of said county money, bills, notes, and other paper circulating as money, the property of said citizens of said county, to the amount and of the value of twenty-five thousand dollars;
15 that said amount in money, bills, notes, and other paper circulating as money aforesaid was taken, received, and held on deposit in said Bank of Juneau, at the said city of Juneau, in the

said county of Dodge and State of Wisconsin, by said Charles E. Cook and Frank Leake by the express order and direction of said Charles E. Cook and with his full knowledge, and no part of said amount has ever been paid or returned to said depositors, but is now due them from said bank and the said owners thereof; that on the said 6th day of January, A. D. 1890, the said Charles E. Cook and the said Frank Leake were and each of them was and ever since has been insolvent, and that on said 6th day of January, A. D. 1890, the said Bank of Juneau was and ever since has been unsafe and insolvent, and that the said insolvency of said Charles E. Cook, Frank Leake, and the Bank of Juneau was well known to said Charles E. Cook on and ever since the said 6th day of January, A. D. 1890; that at the time the said deposits were received as aforesaid the said Charles E. Cook knew and had good reason to know that he, the said Charles E. Cook, the said Frank Leake, and the said Bank of Juneau were each and all of them unsafe and insolvent; that on the 20th day of June, A. D. 1890, at the said city of Juneau, in the said county of Dodge and State of Wisconsin, said Charles E. Cook, as such banker as aforesaid, did accept and receive a deposit in said Bank of Juneau from one Herman Becker, a resident of said county of Dodge,— one hundred and seventy-five dollars in money, the property of said Herman Becker of the value of one hundred and seventy-five dollars, and the same has never been paid or returned to said Herman Becker or to any one for him, but is still due him from said Bank of Juneau and the owners thereof; that at the time of receiving said deposit of one hundred and seventy-five dollars from said Herman Becker as aforesaid the said Charles E. Cook knew and had good reason to know that he, the said Charles E. Cook, the said Frank Leake, and the said
16 Bank of Juneau were each and all of them unsafe and insolvent; that said deposit from said Herman Becker and all the other deposits hereinbefore mentioned were received by said Charles E. Cook with intent to cheat and defraud, contrary to the statute in such case made and provided and against the peace and dignity of the State of Wisconsin. Wherefore said George W. Morse prays that a warrant may issue according to the statute in such case made and provided, and that said Charles E. Cook may be arrested and dealt with according to law.

GEO. W. MORSE.

Subscribed and sworn to before me this 5th day of March, A. D. 1891.

THEO. P. HEMMY,
Justice of the Peace.

STATE OF WISCONSIN, }
County of Dodge, } *ss:*

I, Theodore P. Hemmy, a justice of the peace in and for the city of Juneau, in the said county of Dodge and State of Wisconsin, hereby certify that the original complaint in the case of The State of Wisconsin against Charles E. Cook, of which the foregoing is a copy, was

made before me as such justice of the peace on the 5th day of March, 1891, by George W. Morse, and the same is now on file in my office, in said city of Juneau, in said county of Dodge, and that I have the legal custody thereof. I further certify that I have compared the foregoing copy of said complaint with the said original instrument now on file in my office as aforesaid, and that the same is a true copy of said original.

Witness my hand, at Juneau aforesaid, this 5th day of March, A. D. 1891.

THEO. P. HEMMY,
Justice of the Peace.

17 STATE OF WISCONSIN, } ss:
County of Dodge, }

OFFICE OF CLERK OF CIRCUIT COURT.

I, Geo. W. Morse, clerk of the circuit court of the county of Dodge, in the State of Wisconsin, the said court being a court of record and having a seal, hereby certify that Theo. P. Hemmy, Esquire, whose name appears subscribed to the annexed instrument, was at the date thereof a justice of the peace of said county, duly elected and qualified and empowered by the laws of said State to administer oaths and take acknowledgements of deeds, and that to his acts and attestations as such full faith and credit are and ought to be given in the court and out. I further certify that I verily believe said signature purporting to be his is genuine, and that said instrument is executed and acknowledged according to the laws of said State.

In witness whereof I have hereunto set my hand and
[SEAL.] affixed the seal of said court, at Juneau, in said county and State, on said 5th day of March, A. D. 1891.

GEO. W. MORSE,
Clerk of Circuit Court as Aforesaid.

18 STATE OF WISCONSIN, } ss:
County of Dodge, }

THE STATE OF WISCONSIN }
against }
CHARLES E. COOK. }

The State of Wisconsin to the sheriff or any constable of said county:

Whereas George W. Morse, who is a resident of said county and has been for many years, has this day complained in writing to me on oath that said Charles E. Cook and one Frank Leake did on or about the 7th day of May, A. D. 1889, open an office or place of business at the city of Juneau, in said county of Dodge and State of Wisconsin, and called and styled such office or place of business the Bank of Juneau, and immediately entered upon and engaged in a general banking, brokerage exchange, and deposit business, having a pretended capital of ten thousand dollars, and continued in such business, soliciting and receiving deposits and calling their institution a bank, up to and including the 20th day of June, A. D. 1890,

when said bank closed its doors; that all of said banking business was done as aforesaid and all of said deposits received as aforesaid at the city of Juneau, in said county of Dodge and State of Wisconsin; that during all of said time said Charles E. Cook was the principal owner of said bank, he owning nine-tenths ($\frac{9}{10}$) of said bank and said Frank Leake owning one-tenth ($\frac{1}{10}$) thereof; that during all of said time said Charles E. Cook was an officer of said bank and had the general supervision of the business thereof, and all business of said bank was transacted by him personally or by his order and direction by one G. D. Richardson, who was acting as his agent; that from the 6th day of January, A. D. 1890, to and including the 20th day of June, A. D. 1890, at said city of Juneau, in said county of Dodge and State of Wisconsin, the said
19 Charles E. Cook by the inducements and pretenses held out by him and by said Bank of Juneau received and accepted on deposit from citizens of said county money, bills, notes, and other property circulating as money, the property of said citizens of said county, to the amount and of the value of twenty-five thousand dollars; that said amount in money, bills, notes, and other paper circulating as money as aforesaid was taken, received, and held on deposit in said Bank of Juneau, at the said city of Juneau, in the said county of Dodge and State of Wisconsin, by said Charles E. Cook and Frank Leake by the express order and direction of said Charles E. Cook and with his full knowledge, and no part of said amount has ever been paid or returned to said depositors, but it is now due them from said bank and the said owners thereof; that on said 6th day of January, A. D. 1890, the said Charles E. Cook and the said Frank Leake were and each of them was and ever since has been insolvent, and that on said 6th day of January, A. D. 1890, the said Bank of Juneau was and ever since had been unsafe and insolvent, and that the said insolvency of said Charles E. Cook, Frank Leake, and the Bank of Juneau was well known to said Charles E. Cook on and ever since the said 6th day of January, A. D. 1890; that at the time the said deposits were received as aforesaid the said Charles E. Cook knew and had good reason to know that he, the said Charles E. Cook, the said Frank Leake, and the said Bank of Juneau were each and all of them unsafe and insolvent; that on the 20th day of June, A. D. 1890, at the said city of Juneau, in the said county of Dodge and State of Wisconsin, said Charles E. Cook as such banker as aforesaid did accept and receive on deposit in said Bank of Juneau from one Herman Becker, a resident of said county of Dodge, one hundred and seventy-five dollars in money, the property of said Herman Becker to the value of one hundred and seventy-five dollars, and the same has never been paid or returned to said Herman Becker or to any one for him, but is still due him from said Bank
20 of Juneau and the owners thereof; that at the time of receiving said deposit of one hundred and seventy-five dollars from said Herman Becker as aforesaid the said Charles E. Cook knew or had good reason to know that he, the said Charles E. Cook, the said Frank Leake, and the said Bank of Juneau were each and all of them unsafe and insolvent; that said deposit from said Herman

Becker and all the other deposits hereinbefore mentioned were received by said Charles E. Cook with intent to cheat and defraud, contrary to the statute in such case made and provided and against the peace and dignity of the State of Wisconsin, and prayed that the said Charles E. Cook might be arrested and dealt with according to law:

Now, therefore, you are commanded forthwith to apprehend the said Charles E. Cook and to bring him before me to be dealt with according to law.

Given under my hand, at Juneau, in said county, this 5th day of March, A. D., 1891.

THEO. P. HEMMY,
Justice of the Peace.

STATE OF WISCONSIN, } ss:
County of Dodge, }

I, Theodore P. Hemmy, justice of the peace in and for the city of Juneau, in said county of Dodge and State of Wisconsin, hereby certify that as justice of the peace aforesaid I did on the 5th day of March, A. D., 1891, issue the war-ant in the case of The State of Wisconsin against Charles E. Cook, of which the foregoing is a copy, and that I now have the legal custody of said original warrant. I further certify that I have compared the said foregoing copy of said warrant with the said original warrant issued by me as aforesaid, and that the same is a true copy of said original.

Witness my hand, at Juneau aforesaid, this 5th day of March, A. D. 1891.

THEO. P. HEMMY,
Justice of the Peace.

21 STATE OF WISCONSIN, } ss:
County of Dodge, }

OFFICE OF CLERK OF CIRCUIT COURT.

I, Geo. W. Morse, clerk of the circuit court of the county of Dodge, in the State of Wisconsin, the said court being a court of record and having a seal, hereby certify that Theo. P. Hemmy, Esquire, whose name appears subscribed to the annexed instrument, was at the date thereof a justice of the peace of said county, duly elected and qualified and empowered by the laws of said State to administer oaths and take acknowledgements of deeds, and that to his acts and attestations as such full faith and credit are and ought to be given in the court and out; I further certify that I verily believe said signature purporting to be his is genuine, and that said instrument is executed and acknowledged according to the laws of said State.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Juneau, in said county and State, on said 5th day of March, A. D. 1891.

[SEAL.]

GEO. W. MORSE,
Clerk of Circuit Court as Aforesaid.

22 STATE OF ILLINOIS, EXECUTIVE DEPARTMENT.

Joseph W. Fifer, governor of Illinois.

To any sheriff, coroner, or constable of any county in this State, Greeting:

The executive authority of the State of Wisconsin demands of me the apprehension and delivery of Charles E. Cook, represented to be a fugitive from justice, and has, moreover, produced and laid before me a copy of an affidavit made by and before a properly empowered officer in and of the said State, in accordance with the laws thereof, charging Charles E. Cook, the person so demanded, with having committed against the laws of the said State of Wisconsin the crime of illegal banking, which appears by the said copy of an affidavit certified as authentic by the governor of the said State, now on file in the office of the secretary of state of Illinois.

Therefore, in compliance with the Constitution and the laws of the United States and of this State, in the name of the people of the State of Illinois, you are hereby commanded to arrest and secure the said fugitive, Charles E. Cook, if he be found within the limits of this State, and deliver him into the custody of Colden A. Hart, the agent of executive authority of the said State of Wisconsin appointed to receive the said fugitive:

Provided such agent shall appear within six months from the time of the arrest, and the said agent is hereby empowered to transport the said fugitive without hindrance or molestation of any sort or in any manner to the extreme limits of this State, in furtherance of his authority, he paying all costs and fees for the arrest, detention, and delivery of the said fugitive.

And you make due and formal return to this department of the time and manner in which this writ may be served.

In affirmation and testimony of all the foregoing I
23 hereunto set my hand and cause to be affixed the great seal of State. Done at the city of Springfield this tenth day of March, in the year of our Lord one thousand eight hundred and ninety-two, and of the Independence of the United States the one hundred and fifteenth.

[SEAL.] JOSEPH W. FIFER.

By the governor:

I. N. PEARSON,
Secretary of State.

That pursuant to such warrant and proceedings your petitioner was seized and turned over to the agent named therein, whereupon he applied to the Honorable Walter Q. Gresham, judge of the circuit court of the United States for the district of Illinois, sitting at Chicago, for a writ of *habeas corpus*, and a writ to that end was duly issued in accordance with the prayer of said petitioner, but before the same could be served and for the purpose of avoiding and preventing the service of said writ your petitioner was forcibly put into a close carriage and driven by circuitous routes through alleys and obscure streets to Evanston, twelve miles from the city of Chicago,

and there put upon a train where he was hurried to Wisconsin and placed in jail, and thereby the service of said writ of *habeas corpus* was prevented and by means of which your petitioner was carried to a foreign jurisdiction, remote from his friends and neighbors, and where he was without means of defense; all of which was done under and pursuant to the alleged warrant and proceedings and under and by virtue of which he is yet held and detained and not otherwise.

And your petitioner says that said imprisonment is illegal and in violation of the Constitution and laws of the United States in this, to wit:

1. That your petit-oner is not legally charged with any crime in the said State of Wisconsin.

24 2. That your petitioner was not in the State of Wisconsin on the 20th day of June, A. D. 1890, at the time of the commission of said offense specified in said rendition proceedings, nor at any subsequent date until he was seized and taken there as aforesaid, and was not at the time of said proceedings or any of them or of such seizure thereunder a fugitive from justice within the terms and meaning of the Constitution and laws of the United States.

3. That said proceedings in the State of Wisconsin, prior to the issuance of the demand by the governor of the said State, were insufficient under the laws thereof then in force and the executive regulations governing such demand to authorize the making thereof.

4. That said proceedings and demand were insufficient under the laws of the State of Illinois then in force to authorize the issuance of said warrant and the rendition of your petitioner by the governor of the State of Illinois.

5. That said proceedings were not instituted in good faith, but to extort a settlement of money demands against your petitioner, and to that end said affidavit charging that your petitioner was a fugitive from justice and had fled from Wisconsin was falsely and corruptly made, the said affiants, each and all of them, well knowing that your petitioner was not in said State of Wisconsin on the twentieth day of June, A. D. 1890, at the time of the commission of said offense, nor at the time the deposit of Herman Becker of one hundred and seventy-five dollars referred to in said affidavits was made in said Bank of Juneau, nor at any other time when or after your petitioner became or was insolvent, and that said false charge was so corruptly and fraudulently made and your petitioner extradited thereunder by imposing on the governors of the States of Wisconsin and Illinois, and your petitioner hurried from the State of his citizenship and domicile into a foreign State and imprisoned and

25 held to bail; by means of which he insists that he was and is deprived of his liberty without due process of law, contrary to the Constitution of the United States.

Wherefore your petitioner prays a writ of *habeas corpus* may issue out of the circuit court of the United States for the district of Wisconsin to the said Colden A. Hart, requiring him to produce the body of your petitioner before said court at some convenient time to

be therein designated, there to abide what shall be awarded by the court in the premises, and that your petitioner may be discharged from said imprisonment.

CHARLES E. COOK.

ALDRICH, PAYNE & WASHBURN,
Plaintiff's Attorneys.

STATE OF WISCONSIN, } ss:
County of Dodge, }

On this 11th day of February, A. D. 1892, personally came Charles E. Cook, the above-named petitioner, before me, and, being by me duly sworn, made oath that the foregoing petition by him subscribed is true in substance and in fact.

[SEAL.] GEO. W. MORSE,
Clerk of Courts, Dodge Co., Wis.

Order on Above Petition.

Whereupon it is ordered by the court that a writ of *habeas corpus* be issued to said Colden A. Hart, sheriff as aforesaid, returnable on Monday next at 2 o'clock p. m.

And same day writ of *habeas corpus* issued as follows:

26 UNITED STATES OF AMERICA:

Circuit Court of the United States for the Eastern District of
[SEAL.] Wisconsin.

The President of the United States of America to Colden A. Hart, sheriff of Dodge county, Wisconsin:

We command you that you have the body of Charles E. Cook, by you imprisoned and detained, as it is said, together with the cause of such imprisonment and detention, by whatever name the said Charles E. Cook may be called or charged, before the circuit court of the United States for the eastern district of Wisconsin, on the 15th day of February, in the year one thousand eight hundred and ninety-two, at 2 o'clock p. m. of said day, to do and receive what shall then and there be considered and adjudged concerning the said Charles E. Cook, and you have then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 13th day of February, in the year one thousand eight hundred and ninety-two, and of the Independence of the United States the one hundred and sixteenth.

EDWARD KURTZ, *Clerk.*

EASTERN DISTRICT OF WISCONSIN, *ss:*

I certify that the foregoing writ was allowed by the said court.

EDWARD KURTZ, *Clerk.*

27 *Marshal's Return to Writ of Habeas Corpus.*

I hereby certify that I personally served the within writ on C. A. Hart, sheriff of Dodge county, Wis., by delivering to him the original writ (of which the within is a duplicate) at Juneau, Wis., this 15th day of February, A. D. 1892.

G. M. WISWELL, *Marshal,*
By WILLIAM BUCKLEY, *Deputy.*

FEBRUARY 15TH, 1892.

This day came the petitioner, by his counsel, Mr. Charles Quarles, and the respondent Colden A. Hart, sheriff of Dodge Co., Wis., by his counsel, Mr. W. C. Williams. The respondent moved the court to dismiss the writ of *habeas corpus* issued herein for reasons filed; and, counsel for the petitioner not being ready to proceed, it is ordered by the court that the hearing of said motion be continued to Saturday, February 27th.

Which motion to dismiss is as follows:

United States Circuit Court, Eastern District of Wisconsin.

In Re Petition of CHARLES E. COOK for a Writ of *Habeas Corpus.*

And now comes Colden A. Hart, sheriff of Dodge county, Wisconsin, who appears by W. C. Williams, his attorney in that behalf, and moves the court to dismiss the writ of *habeas corpus* heretofore granted herein by this court upon the petition of Charles E. Cook, verified on the 11th day of February, 1892, and filed in this court on the 13th day of February, 1892, for the reasons following:

First. Because it appears from the petition itself that the party is not entitled thereto, and that the writ must be dismissed by the court.

Second. Because the said writ was improvidently granted, and said petition does not state the facts in relation to the cause
28 of detention of said Charles E. Cook, to the knowledge of the said Charles E. Cook, as he well knew at the time of the making said petition; that the warrant and papers set out in said petition were not the warrant and papers on which the said Charles E. Cook was held in custody, and the said application was not made in good faith, but merely for the purpose of the delay and the prevention of trial in the courts of the State of Wisconsin.

Third. Because it appears from the face of the papers that the said Charles E. Cook is charged with crime in a State court of competent and plenary jurisdiction in the State of Wisconsin with a crime against the laws of the State of Wisconsin, and the petition does not present any case for interference of the United States court provided by the laws of the United States.

COLDEN A. HART,
By W. C. WILLIAMS,
His Attorney.

FEBRUARY 27, 1892.

This day came the petitioner, by his counsel, and by leave of the court filed his supplemental petition, which is as follows:

29 *Petition for Habeas Corpus.*

United States Circuit Court, Eastern District of Wisconsin.

In Re CHARLES E. COOK.

Now comes Charles E. Cook, the petitioner herein, and shows to the court that since the filing of his original petition an attempt has been made to put him upon trial for charges not mentioned in the rendition proceedings set out in the original petition herein in the circuit court of Dodge county, Wisconsin, and that he would have been compelled, notwithstanding the pendency of his said petition for *habeas corpus* in this court, to go to trial upon said indi-tments (he at the same time objecting to the jurisdiction of the court for the reason that the said court had no right to procure his rendition upon one charge and, having so done, to cause him to be indi-ted away from his home and witnesses upon other and different charges) but for the fact that he applied for and was granted a change of venue on the ground that there was such a prejudice against him throughout the said Dodge county, Wisconsin, that he could not have a fair and impartial trial therein.

He further represents to the court that he is still held in custody by the said Colden A. Hart notwithstanding the said change of venue; that although the prosecuting attorney was requested by his said counsel not to send him to Jefferson county, Wisconsin, for trial, yet, with a view to harrass and annoy him and cause
30 him additional expense and trouble and with a further view of preventing him from obtaining bail, and although there were other and adjacent counties in which a trial at any early date could have been held, yet the said prosecuting attorney, notwithstanding such requests, caused the change to be made to Jefferson county, Wisconsin, where there is no session of the court until September next, and this was done at the instance of said prosecuting attorney, notwithstanding the suggestion made by the court that it seemed to him wise to have the said venue changed to a county where a speedy trial could be had.

And your petitioner further shows that he has since he was so surrendered to the State of Wisconsin paid in full and settled four-fifths of all of the claims for which his partnership was liable and could and would pay all of them were he at liberty and permitted to have an opportunity of managing his own affairs.

He further shows to the court that heretofore excessive bail has been required of him, and that, although the entire indebtedness of the partnership yet remaining unpaid only amounts to nine thousand (9,000) dollars, he has been required to give twelve thousand dollars bail for his appearance; that his bondsmen have now surrendered him and he is unable to give such excessive bail as is ex-

acted by the State court and cannot give security for his appearance in the State court.

He therefore as supplemental to his original petition herein requests that he may be admitted to bail in a reasonable sum under the order of this court.

And so your petitioner will ever pray.

[SEAL.] CHARLES E. COOK.

Subscribed and sworn to before me this 26th day of February, A. D. 1892.

W. T. RAMBUSCH,
Notary Public, Wis.

30¼ United States Circuit Court, Eastern Dist. of Wisconsin.

In re CHAS. E. COOK, on *Habeas Corpus.*

And now comes the said Colden A. Hart, by W. C. Williams, his attorney in that behalf, and moves the court for a postponement and continuance of the hearing and further proceedings herein until after a trial is had in said action in the circuit court of Dodge county, Wisconsin, for the reasons following:

1st. That it appears from the face of the papers that said writ was improvidently granted and under a mistake of fact which, if disclosed before the issuance of the writ, would have caused the court in its sound discretion to have refused the writ until after such trial.

2. Because said writ and the grounds assigned therefor present no question of a violation of the Constitution of the United States or any law of the United States.

3. For the reason that the present consideration and determination of any question raised by said petition is not urgent or necessary and might tend to delay and embarrass the proceedings in the said State courts without sufficient reason therefor.

4. Because the State court has full jurisdiction of the subject-matter involved in said charge of crime, and this court ought not at this time to permit this writ to stand in the way of a speedy and orderly trial of said case in said State court, and no rights of petitioner will be jeopardized in any way by such postponement.

5. Because a sound discretion requires such postponement until after such trial, without prejudice to the proceeding in said State courts or any hindrance or delay in said courts on account of this writ.

30½ And for such other and further relief or disposition in that behalf as to the court shall seem consistent with justice and right.

COLDEN A. HART,
By W. C. WILLIAMS,
His Attorney.

Dated Feb'y 27th, 1892.

Here follows affidavit of P. G. Lewis and remarks of Judge Sloan on the motion for a change of venue and the following certified copy of order, to wit:

30½ Circuit Court, Dodge County, September Term, 1891, to wit, Nov. 27th, 1891, 19th Day.

THE STATE OF WISCONSIN }
vs. }
CHARLES E. COOK. }

The defendant Cook appeared personally in court and entered into recognizance for his appearance at the next general term of the circuit court to answer criminal prosecutions, aggregating in the sum of $12,000.00, with James B. Gates and James B. Estee as sureties, which bonds were duly approved by the court.

Whereupon it was ordered by the court that the bonds heretofore given by the said defendant for his appearance at this term (September term, 1891,) of court be cancelled and discharged and the surties thereon freed from further liability.

Eight bonds filed.

STATE OF WISCONSIN, } *ss:*
County of Dodge, }

I, G. W. Morse, clerk of the circuit court in and for said State and county, do hereby certify that I have compared the annexed with the original entries made in my minute book; that it is a correct transcript therefrom and of the whole thereof as the same remains on record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office, in the city of Juneau, this 12th day of February, A. D. 1892.

GEORGE W. MORSE, *Clerk.*

31 In the Matter of the Petition of CHARLES E. COOK for a Writ of *Habeas Corpus.*

And same day (February 27, 1892) came the respondent, by his counsel, Mr. Williams, and moved the court for a postponement of the hearing of his motion to dismiss the writ of *habeas corpus* issued herein until after a trial is had of the petitioner in the action in the circuit court of Dodge county, Wis., for reasons filed; and said motion for a postponement of the hearing of the motion to dismiss the said writ came on to be heard and was argued by Mr. Williams in support of the same and by Mr. Aldrich in opposition and submitted, when the court took the same under consideration.

FEBRUARY 29, 1892.

This day came the parties, by their counsel, and on consideration of the motion of the respondent for a postponement of the hearing of the motion to dismiss the writ of *habeas corpus* issued herein and all other proceedings until after the trial of the petitioner in the

action in the State court it is ordered by the court that said motion be, and hereby is, overruled.

And thereupon the motion of the respondent to dismiss the said writ of *habeas corpus* being submitted, on consideration thereof it is ordered by the court that said motion be, and hereby is, stricken from the files as incorrect in practice; and it is further ordered that the respondent make his return to said writ by 2 o'clock tomorrow afternoon.

MARCH 1, 1892.

Return of respondent, Colden A. Hart, sheriff of Dodge county, Wisconsin, to writ of *habeas corpus* filed, as follows:

32 UNITED STATES OF AMERICA:

[SEAL.] Circuit Court of the United States for the Eastern District of Wisconsin.

The President of the United States of America to Colden A. Hart, sheriff of Dodge county, Wisconsin:

We command you that you have the body of Charles E. Cook, by you imprisoned and detained, as it is said, together with the cause of such imprisonment and detention, by whatever name the said Charles E. Cook may be called or charged, before the circuit court of the United States for the eastern district of Wisconsin on the 15th day of February, in the year one thousand eight hundred and ninety-two, at 2 o'clock p. m. of said day, to do and receive what shall then and there be considered and adjudged concerning the said Charles E. Cook, and you have then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 13th day of February, in the year one thousand eight hundred and ninety-two, and of the Independence of the United States the one hundred and sixteenth.

EDWARD KURTZ, *Clerk.*

EASTERN DISTRICT OF WISCONSIN, *ss:*

I certify that the foregoing writ was allowed by the said court.

EDWARD KURTZ, *Clerk.*

33 To the circuit court of the United States for the eastern district of Wisconsin:

I, Colden A. Hart, sheriff of Dodge county, State of Wisconsin, to whom the within writ is directed, do hereby certify that on the 22nd day of November, 1891, the said petitioner, Charles E. Cook, was duly charged by information duly filed on that day in the circuit court of Dodge county, Wisconsin, with a crime against the laws of the State of Wisconsin, under section 4541 of the Revised Statutes of the State of Wisconsin, by P. G. Lewis, Esq., then and there duly qualified and authorized district attorney of the county of Dodge, Wisconsin, a duly certified copy of which said informa-

tion is hereto attached and made a part of this return, and to answer to which said information the said Charles E. Cook theretofore had been duly and regularly bound over upon a preliminary examination on the charge therein contained duly and regularly had before Theodore P. Hemmy, Esq., a duly qualified justice of the peace of said county of Dodge, and the said information was so as aforesaid duly filed during the next regular term of the circuit court for Dodge county aforesaid after the preliminary examination aforesaid; that bail in said cause was fixed by the order of the said circuit court in the sum of five thousand dollars.

And I do further certify that thereupon and thereafter, on the 27th day of November, 1891, bail was duly given in said court by the said Charles E. Cook in said sum for his appearance at the next regular term of the said court, beginning February 9th, 1892, and that thereafter, on the 12th day of February, 1892, on the 4th day of said February term of said court, the said Charles E. Cook appeared in open court in said court and voluntarily surrendered himself to me as sheriff of said county, and, upon motion of the
34 defendant, the bonds which had theretofore been given by him for his appearance as aforesaid were canceled and the sureties discharged from liability, and the said Charles E. Cook was by order of the said court remanded to my custody, as will appear from a copy of the records of said court, duly certified by the clerk thereof, hereto attached, and that upon the 18th day of February, 1892, the said Charles E. Cook was duly arraigned in open court upon such information and pleaded not guilty to said information, and at the time of the coming of said annexed writ of *habeas corpus* to me said cause was at issue in said court for trial upon said plea of not guilty.

And I further certify that at the time of the coming of the annexed writ of *habeas corpus* to me on the 15th day of February, 1892, the said Charles E. Cook was held and detained by me as sheriff of Dodge county, Wisconsin, under and by virtue of the proceedings and processes aforesaid in said circuit court and the order of said circuit court duly made in said proceedings remanding him to my custody to await his trial in said court in default of bail.

And I further certify that thereafter, on the 20th day of February, 1892, in the circuit court of Dodge county aforesaid, upon a motion duly made by the said Charles E. Cook, said court ordered a change of place of trial of said case from Dodge county aforesaid to the circuit court of Jefferson county, Wisconsin, a copy of which said order is hereto attached & made part of this return, and upon such order changing the place of trial and in default of bail as required by said order said circuit court duly issued to me its warrant as required by law, a true copy of which is hereto attached and made a part of this return, and that I now hold the said Charles E. Cook in my custody under and by virtue of said warrant, proceedings, processes, and orders hereinbefore set forth.

And I do hereby further certify that in addition to the
35 matters hereinbefore set forth at a term of said circuit court of Dodge county, begun on the second Tuesday of February,

1891, seven several indictments were duly found and returned into court by the grand jury of said county charging him with crimes against the laws of the State of Wisconsin, upon each of which said indictments a warrant of said court was thereupon issued to me as such sheriff, and such proceedings were thereafter had in relation thereto that said Charles E. Cook gave bail upon each of said charges of crime in the sum of one thousand dollars for his appearance at the next term of said court, to wit, the term beginning on the 4th Tuesday of September, 1891, and during said term, to wit, on the 27th day of November, 1891, the said Charles E. Cook appeared in said court and again gave bail, as required by said court, for his appearance in said court at the term beginning February 9th, 1892, in the same sum in each of said cases; and that thereafter, on the 12th day of February, 1892, on the 4th day of said February term of court, the said Charles E. Cook appeared in open court in said court and voluntarily surrendered himself to me as sheriff of said county, and upon his motion the said bain bonds which had theretofore been given by him in each of said cases to answer to said indictments aforesaid where thereupon duly cancelled and the sureties thereon discharged from liability, and the said Charles E. Cook was, by order of the said court duly made and entered in each of said cases, remanded to my custody, a copy of which said order, entries, and records of said court in each of said cases was and is identical with the copy hereto attached to this return in reference to the aforesaid information; and that upon the 13th day of February, 1892, the said Charles E. Cook was duly arraigned in open court upon each of said several indictments in addition to the aforesaid information and entered a plea of not guilty to each of said several indictments, and at the time of the
36 coming to me of the annexed writ each of said several cases *were* at issue in said court for trial upon such plea of not guilty in each case, and that the said Charles E. Cook was held and detained by me under and by virtue of the said several orders made in said several cases pending in said court upon said *upon said* several indictments, in addition to the orders of said court made in reference to the cause then pending in said court upon the aforesaid information, as hereinbefore set forth, at the time of the coming of the said writ of *habeas corpus* to me as aforesaid.

And I do hereby further certify that thereafter, on the 20th day of February, 1892, in the said circuit court of Dodge county and during said term last aforesaid, upon a motion duly made by the said Charles E. Cook in each of said several cases upon said several indictments aforesaid, said circuit court ordered a change of the place of trial of each of said several cases from Dodge county aforesaid to the circuit court of Jefferson county, in said State, in like manner as in reference to the aforesaid information, and a like order was made in each of said cases in addition to that made upon the aforesaid information, copies of which said orders are hereto attached and made part of this return; and in default of bail in each of said cases also said court thereupon issued to me its warrant in each of said cases, a copy of each of said warrants being hereto attached and

made a part of this return, and that, in addition to the like warrant issued to me in said first case on the information as aforesaid, I now hold the said Charles E. Cook in my custody under and by virtue of each of said warrants and the aforesaid proceedings and order of said court in each of said cases pending as aforesaid upon indictment in said court in addition to the proceedings and processes, orders and warrants, hereinbefore set forth in this return in
37 reference to the case pending in said circuit court upon said information, and that the foregoing are the true causes of the imprisonment and detention of the said Charles E. Cook by me, and I now have the said Charles E. Cook before the court in obedience to the annexed writ of *habeas corpus*.

Dated February 29th, 1892.

COLDEN A. HART,
Sheriff of Dodge County, State of Wisconsin.

38 STATE OF WISCONSIN, }
Dodge County. }

In Circuit Court.

THE STATE OF WISCONSIN }
against }
CHARLES E. COOK. }

I, P. G. Lewis, district attorney for said county, hereby inform the court that on the 20th day of June, in the year 1890, at the city of Juneau, in the county of Dodge and State of Wisconsin, one Charles E. Cook was then and there a banker and an officer, director, manager, owner, proprietor, and agent of a certain banking, exchange, brokerage, and deposit institution in the said city of Juneau, in the county of Dodge and State of Wisconsin aforesaid, and then and there engaged in the banking, brokerage, exchange, and deposit business under the name and style and known and called by the name of the Bank of Juneau, Charles E. Cook & Co., bankers, — did then & there unlawfully and feloniously accept and receive on deposit for safe keeping in the Bank of Juneau aforesaid, from one Herman Becker, one hundred and seventy-five dollars in money of the value of one hundred & seventy-five dollars of the personal goods, money, and property of the said Herman Becker then and there being, and the said sum of one hundred and seventy-five dollars in money was so as aforesaid received in the Bank of Juneau aforesaid on deposit by the said Charles E. Cook, and he, the said Charles E. Cook, at the time of receiving said deposit as aforesaid, then and there well knew and then and there had good reason to know that he, the said Charles E. Cook, the said firm of Charles E. Cook & Co., and the said Bank of Juneau were all and each of them unsafe and insolvent, and the said Charles E. Cook, the said firm of Charles E. Cook and Co., and the said Bank of Juneau were all and each of them unsafe and insolvent in fact, whereby the said deposit, to wit, the said sum of one hundred and seventy-five dollars, was

lost to the said Herman Becker, against the peace and dig-
39 nity of the State of Wisconsin.
Dated September 22nd, 1891.

P. G. LEWIS,
District Attorney for Dodge Co., Wis.

(Endorsed: "The State of Wisconsin against Charles E. Cook. Information. Feb. 13, def't arraigned. Inf. read & def't interposed sp. plea to the jurisdiction. Overruled and plea of not guilty. A. Scott Sloan, judge. Filed Nov. 22, 1891. G. W. Morse, clerk circuit court.")

STATE OF WISCONSIN, } ss:
County of Dodge, }

I, Geo. W. Morse, clerk of the circuit court in and for said State and county, do hereby certify that I have compared the annexed with the original information in the case of the State of Wisconsin against Charles E. Cook; that it is a correct transcript therefrom and of the whole thereof as the same remains on file and record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the clerk's office, in the city of Juneau, this — day of ——, A. D. 188-.

[SEAL.] GEO. W. MORSE, *Clerk.*

Circuit Court, Dodge County, September Term, 1891, to wit, Nov. 27, 1891, 19th Day.

THE STATE OF WISCONSIN }
against
CHARLES E. COOK. }

The defendant Cook appeared personally in court and entered into recognizance for his appearance at the next general term of this circuit court to answer criminal prosecutions, aggregat-
40 ing in the sum of $12,000.00, with James B. Gates and James B. Estee as sureties, which bonds were duly approved by the court.

Whereupon it was ordered by the court that the bonds heretofore given by the said defendant for his appearance at this term (September term, 1891) of court be cancelled and discharged and the sureties thereon freed from further liability.

Eight bonds filed.

STATE OF WISCONSIN, } ss:
County of Dodge, }

I, G. W. Morse, clerk of the circuit court in and for said State and county, do hereby certify that I have compared the annexed with the original entries made in my minute book; that it is a correct

transcript therefrom and of the whole thereof as the same remains on record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the clerk's office, in the city of Juneau, this 12th day of February, A. D. 1892.

[SEAL.] GEO. W. MORSE, *Clerk.*

Circuit Court, Dodge County, February Term, 1892, to wit, February 12, 1892, 4th Day.

Court convened in due form at 9 o'clock a. m.
Present and presiding: Hon. A. Scott Sloan, judge.
Present: Geo. W. Morse, clerk.
The following proceedings were had:

THE STATE OF WISCONSIN, Plaintiff,
vs.
CHARLES E. COOK, Defendant.

The defendant appeared in open court and there surrendered himself to the sheriff, whereupon the court ordered that the bonds given for his appearance at this term of court be discharged and the sureties thereof freed from further liability, and that the defendant be
41 remanded to the custody of the sheriff of Dodge county.

STATE OF WISCONSIN, } *ss:*
Dodge County, }

I, Geo. W. Morse, clerk of the circuit court in and for said State and county, do hereby certify that I have compared the foregoing with the original entries, and that the same are true and correct copies thereof.

Witness my hand and seal of said court this 12th day of February, A. D. 1892.

GEO. W. MORSE,
Clerk Circuit Court.

STATE OF WISCONSIN, } *ss:*
County of Dodge, }

I, Geo. W. Morse, clerk of the circuit court in and for said State and county, do hereby certify that I have compared the annexed with the original order changing venue to Jefferson county and requiring recognizance in case of The State of Wisconsin *vs.* Charles E. Cook; that it is a correct transcript therefrom and of the whole thereof as the same remains on file and record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the clerk's office, in the city of Juneau, this 26th day of February, A. D. 1892.

[SEAL.] GEO. W. MORSE, *Clerk,*
By JOHN CLIFFORD,
Deputy Clerk.

42 In Circuit Court, Dodge County.

STATE OF WISCONSIN, Plaintiff,
vs.
CHARLES E. COOK, Defendant. } Information.

The above-entitled cause being at issue in the above-entitled circuit court, upon the information of the district attorney of said county, duly filed herein, charging the defendant with the crime of fraudulently receiving deposits under section 4541 of the Revised Statutes of the State of Wisconsin, and said defendant having been duly arraigned and having pleaded not guilty to said information, and said cause having been duly reached and called for trial in said court on the 16th day of February, 1892, and the defendant having on said day moved the court for a change of place of trial of said action, on the ground of the prejudice of the people of the county of Dodge, and said application was based upon the affidavits of the defendant, Charles E. Cook, and eleven others, which affidavits were duly filed herein, and the court having adjourned the hearing of said motion until Saturday, the 20th day of February, 1892, with leave to the State to present counter-affidavits, and said motion coming on to be heard said last-named day upon the aforesaid affidavits on the part of the defendant in support of said motion and the affidavit of Colden A. Hart and one hundred and fifty others in opposition to said motion, duly filed herein, and after hearing arguments of J. E. Malone, Esq., and J. V. Quarles, counsel for the defendant, in support of said motion and W. C. Williams and P. G. Lewis, district attorney, counsel for the State, in opposition thereto, and the court being fully advised in the premises, it is ordered that the place of trial of said action be, and the same hereby is, changed
43 from the county of Dodge, in said State, to the county of Jefferson, in said State, said county of Jefferson being an adjoining county to the county of Dodge, where a fair and impartial trial of said action can be heard.

And said defendant, Charles E. Cook, is ordered and required to enter into a recognizance, with good and sufficient sureties, to be approved by the court or by Hon. A. Scott Sloan, judge of said court, in the sum of five thousand dollars, conditioned for the appearance of the said Charles E. Cook in the circuit court of Jefferson county, Wisconsin, aforesaid, at the first day of the next term thereof, and to abide the order of said circuit court of Jefferson county, Wisconsin, and in default of such recognizance that a warrant be issued directed to the sheriff of Dodge county aforesaid, commanding him to convey the said Charles E. Cook to the jail of Jefferson county aforesaid, the county where he is to be tried, by the first day of the next term of the circuit court, to be holden in said county of Jefferson, State of Wisconsin, there to be kept by the jailor thereof until discharged by due course of law.

Dated at Juneau, Dodge county, Wisconsin, this 20th day of February, A. D. 1892.

By the court:

[COURT SEAL.] A. SCOTT SLOAN,
Circuit Judge.

STATE OF WISCONSIN, } ss:
County of Dodge, }

I, Geo. W. Morse, clerk of the circuit court in and for said State and county, do hereby certify that I have compared the annexed with the original warrant of commitment on default of recognizance on change of venue in case of State of Wisconsin *vs.* Charles E. Cook; that it is a correct transcript therefrom and of the whole thereof as the same remains on file and record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the clerk's office, in the city of
44 Juneau, this 26th day of February, A. D. 1892.

GEO. W. MORSE, *Clerk.*

[SEAL.] By JOHN CLIFFORD,
Deputy Clerk.

In Circuit Court, Dodge County.

STATE OF WISCONSIN, Plaintiff, }
vs. } Information.
CHARLES E. COOK, Defendant. }

STATE OF WISCONSIN, } ss:
Dodge County, }

The State of Wisconsin to the sheriff of Dodge county:

Whereas the above-named Charles E. Cook, the defendant above named, is charged by information of the district attorney of said county, duly made and filed in said court, with the crime of fraudulently receiving deposits under section 4541 of the Revised Statutes of Wisconsin, and said defendant, Charles E. Cook, having been duly arraigned and having pleaded not guilty to said information, and said cause being at issue and having been duly reached and called for trial in said court on the 16th day of February, 1892, and said defendant having on said day moved the court for a change of the place of trial of said action on the ground of the prejudice of the people of Dodge county, and upon full hearing and consideration of the affidavits filed in support of and also against said motion, and the arguments of counsel upon both sides, and the said court having on the 20th day of February, 1892, made an order changing the place of trial of said action from the county of Dodge aforesaid to the county of Jefferson, in said State, said county of Jefferson being an adjoining county, where a fair and impartial trial of said action can be had, as provided by law, and said court having ordered and required the said defendant, Charles E. Cook, to
45 enter into a recognizance, with good and sufficient sureties, to be approved by the court or by the Hon. A. Scott Sloan, judge of said court, in the sum of five thousand dollars, conditioned for the appearance of the said Charles E. Cook in the circuit court of Jefferson county, Wisconsin, at the first day of the next term thereof, and to abide the order of said circuit court of Jefferson county, Wisconsin, until discharged by due course of law, and the

said Charles E. Cook, not having given bail, as by said court required and ordered, *and* is now in default of such recognizance:

Now, therefore, you are hereby commanded the said defendant, Charles E. Cook, to safely keep, in default of such recognizance, in your custody in the county jail of Dodge county aforesaid until the next term of the circuit court of Jefferson county aforesaid, when a trial of said case may be there had, and you are further commanded to convey the said Charles E. Cook to the jail of Jefferson county aforesaid by the first day of the next term of the circuit court to be holden in said county of Jefferson, there to be safely kept by the jailor thereof until discharged by due course of law.

Witness the Hon. A. Scott Sloan, judge of the said circuit court, at the court-house, in Juneau, in our said county, on the 20th day of February, A. D. 1892.

[COURT SEAL.]

GEO. W. MORSE,
Clerk of said Circuit Court.

46 STATE OF WISCONSIN, } *ss:*
County of Dodge, }

I, Geo. W. Morse, clerk of the circuit court in and for said State and county, do hereby certify that I have compared the annexed with the original order changing the venue to Jefferson county and requiring recogn-ance in case of The State of Wisconsin *vs.* Charles E. Cook; that it is a correct transcript therefrom and of the whole thereof as the same remains on file and record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the clerk's office, in the city of Juneau, this 26th day of February, A. D. 1892.

[SEAL.]

GEO. W. MORSE, *Clerk,*
By JOHN CLIFFORD,
Deputy Clerk.

47 In Circuit Court, Dodge County.

STATE OF WISCONSIN, Plaintiff, }
vs. } Indictment No. 1.
CHARLES E. COOK, Defendant. }

The above-entitled cause being at issue in the above-entitled circuit court upon the indictment, duly found and duly filed herein, charging the defendant with the crime of fraudulently receiving deposite under section 4541 of the Revised Statutes of the State of Wisconsin, and said defendant having been duly arraigned and having pleaded not guilty to said indictment, and said cause having been duly reached and called for trial in said court on the 16th day of February, 1892, and the defendant having on said day moved the court for a change of place of trial of said action on the ground of the prejudice of the people of the county of Dodge, and said application was based upon the affidavits of the defendant, Charles E. Cook, and eleven others, which affidavits were duly filed herein, and the court having adjourned the hearing of said motion until Saturday,

the 20th day of February, 1892, with leave to the State to present counter-affidavits, and said motion coming on to be heard said last-named day upon the aforesaid affidavits on the part of the defendant in support of said motion, and the affidavit of Colden A. Hart and one hundred and fifty others in opposition to said motion, duly filed herein, and after hearing arguments of J. E. Malone, Esq., and J. V. Quarles, counsel for the defendant, in support of said motion, and W. C. Williams and P. G. Lewis, district attorney, counsel for the State, in opposition thereto, and the court being fully advised in the premises, it is ordered that the place of trial of said action be, and the same hereby is, changed from the county
48 of Dodge, in said State, to the county of Jefferson, in said State, said county of Jefferson being an adjoining county to the county of Dodge, where a fair and impartial trial of said action can be heard.

And said defendant, Charles E. Cook, is ordered and required to enter into a recognizance, with good and sufficient sureties, to be approved by the court or by Hon. A. Scott Sloan, judge of said court, in the sum of one thousand dollars, conditioned for the appearance of the said Charles E. Cook in the circuit court of Jefferson county, Wisconsin, aforesaid, at the first day of the next term thereof, and to abide the order of said circuit court of Jefferson county, Wisconsin, and, in default of such recognizance, that a warrant be issued directed to the sheriff of Dodge county aforesaid, commanding him to convey the said Charles E. Cook to the jail of Jefferson county aforesaid, the county where he is to be tried, by the first day of the next term of the circuit court, to be holden in said county of Jefferson, State of Wisconsin, there to be kept by the jailor thereof until discharged by due course of law.

Dated at Juneau, Dodge county, Wisconsin, this 20th day of February, A. D. 1892.

By the court:

[COURT SEAL.] A. SCOTT SLOAN,
Circuit Judge.

STATE OF WISCONSIN, } ss:
County of Dodge, }

I, Geo. W. Morse, clerk of the circuit court in and for said State and county, do hereby certify that I have compared the annexed with the original order changing venue to Jefferson county and requiring recognizance in case of State of Wisconsin *vs.* Charles E. Cook; that it is a correct transcript therefrom and of the whole thereof as the same remains on file and record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the clerk's office, in the city of Juneau, this 26th day of February, A. D. 1892.

GEO. W. MORSE, *Clerk.*
[SEAL.] By JOHN CLIFFORD,
Deputy Clerk.

49 In Circuit Court, Dodge County.

STATE OF WISCONSIN, Plaintiff,
vs.
CHARLES E. COOK, Defendant. } Indictment No. 2.

The above-entitled cause being at issue in the above-entitled circuit court upon the indictment, duly found and duly filed herein, charging the defendant with the crime of fraudulently receiving deposits under section 4541 of the Revised Statutes of the State of Wisconsin, and said defendant having been duly arraigned and having pleaded not guilty to said indictment, and said cause having been duly reached and called for trial in said court on the 16th day of February, 1892, and the defendant having on said day moved the court for a change of place of trial of said action on the ground of the prejudice of the people of the county of Dodge, and said application was based upon the affidavits of the defendant, Charles E. Cook, and eleven others, which affidavits were duly filed herein, and the court having adjourned the hearing of said motion until Saturday, the 20th day of February, 1892, with leave to the State to present counter-affidavits, and said motion coming on to be heard said last-named day upon the aforesaid affidavits on the part of the defendant in support of said motion, and the affidavit of Colden A. Hart and one hundred and fifty others in opposition to said motion, duly filed herein, and after hearing arguments by J. E. Malone, Esq., and J. V. Quarles, counsel for the defendant, in support of said motion, and W. C. Williams and P. G. Lewis, district attorney, counsel for the State, in opposition thereto, and the court being fully advised in the premises, it is ordered that the

50 place of trial of said action be, and the same hereby is, changed from the county of Dodge, in said State, to the county of Jefferson, in said State, said county of Jefferson being an adjoining county to the county of Dodge, where a fair and impartial trial of said action can be had.

And said defendant, Charles E. Cook, is ordered and required to enter into a recognizance, with good and sufficient sureties, to be approved by the court or by Hon. A. Scott Sloan, judge of said court, in the sum of one thousand dollars, conditioned for the appearance of the said Charles E. Cook in the circuit court of Jefferson county, Wisconsin, aforesaid, at the first day of the next term thereof, and to abide the order of said circuit court of Jefferson county, Wisconsin, and in default of such recognizance that a warrant be issued directed to the sheriff of Dodge county aforesaid, commanding him to convey the said Charles E. Cook to the jail of Jefferson county aforesaid, the county where he is to be tried, by the first day of the next term of the circuit court to be holden in said county of Jefferson, State of Wisconsin, there to be safely kept by the jailor thereof until discharged by due course of law.

Dated at Juneau, Dodge county, Wisconsin, this 20th day of February, A. D. 1892.

By the court:

[COURT SEAL.] A. SCOTT SLOAN,
Circuit Judge.

STATE OF WISCONSIN, } ss:
County of Dodge, }

I, Geo. W. Morse, clerk of the circuit court in and for said State and county, do hereby certify that I have compared the annexed with the original order changing venue to Jefferson county and requiring recognizance in case of State of Wisconsin *vs.* Charles E. Cook; that it is a correct transcript therefrom and of the whole thereof as the same remains on file and record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at the clerk's office, in the city of Juneau, this 26th day of February, A. D. 1892.

GEO. W. MORSE, *Clerk.*

[SEAL.] By JOHN CLIFFORD, *Deputy Clerk.*

51 In Circuit Court, Dodge County.

STATE OF WISCONSIN, Plaintiff,
vs.
CHARLES E. COOK, Defendant. } Indictment No. 3.

The above-entitled cause being at issue in the above-entitled circuit court upon the indictment, duly found and duly filed herein, charging the defendant with the crime of fraudulently receiving deposits under section 4541 of the Revised Statutes of the State of Wisconsin, and said defendant having been duly arraigned and having pleaded not guilty to said indictment, and said cause having been duly reached and called for trial in said court on the 16th day of February, 1892, and the defendant having on said day moved the court for a change of place of trial of said action on the ground of the prejudice of the people of the county of Dodge, and said application was based upon the affidavits of the defendant, Charles E. Cook, and eleven others, which affidavits were duly filed herein, and the court having adjourned the hearing of said motion until Saturday, the 20th day of February, 1892, with leave to the State to present counter-affidavits, and said motion coming on to be heard said last-named day upon the aforesaid affidavits on the part of the defendant in support of said motion, and the affidavit of Colden A. Hart and one hundred and fifty others in opposition to said motion, duly filed herein, and after hearing arguments of J. E. Malone, Esq., and J. V. Quarles, counsel for the defendant, in support of said motion, and W. C. Williams and P. G. Lewis, district attorney, counsel for the State, in opposition thereto, and the court being fully advised in the premises, it is ordered that the place of trial of said action be, and the same hereby is, changed from the
52 county of Dodge, in said State, to the county of Jefferson, in said State, said county of Jefferson being an adjoining county to the county of Dodge, where a fair and impartial trial of said action can be heard.

And said defendant, Charles E. Cook, is ordered and required to enter into a recognizance, with good and sufficient sureties, to be approved by the court or by Hon. A. Scott Sloan, judge of said

court, in the sum of one thousand dollars, conditioned for the appearance of the said Charles E. Cook in the circuit court of Jefferson county, Wisconsin, aforesaid, at the first day of the next term thereof, and to abide the order of said circuit court of Jefferson county, Wisconsin, and in default of such recognizance that a warrant be issued, directed to the sheriff of Dodge county aforesaid, commanding him to convey the said Charles E. Cook to the jail of Jefferson county aforesaid, the county where he is to be tried, by the first day of the next term of the circuit court to be holden in said county of Jefferson, State of Wisconsin, there to be safely kept by the jailor until discharged by due course of law.

Dated at Juneau, Dodge county, Wisconsin, this 20th day of February, A. D. 1892.

By the court:

[COURT SEAL.] A. SCOTT SLOAN,
Circuit Judge.

STATE OF WISCONSIN, } ss:
County of Dodge, }

I, Geo. W. Morse, clerk of the circuit court in and for said State and county, do hereby certify that I have compared the annexed with the original order changing venue to Jefferson county and requiring recognizance in case of State of Wisconsin *vs.* Charles E. Cook; that it is a correct transcript therefrom and of the whole thereof as the same remains on file and record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the clerk's office, in the city of Juneau, this 26th day of February, A. D. 1892.

[SEAL.] GEO. W. MORSE, *Clerk,*
By JOHN CLIFFORD,
Deputy Clerk.

53 In Circuit Court, Dodge County.

STATE OF WISCONSIN, Plaintiff,
vs.
CHARLES E. COOK, Defendant. } Indictment No. 4.

The above-entitled cause being at issue in the above-entitled circuit court upon the indictment, duly found and duly filed herein, charging the defendant with the crime of fraudulently receiving deposits under section 4541 of the Revised Statutes of the State of Wisconsin, and said defendant having been duly arraigned and having plead not guilty to said indictment, and said cause having been duly reached and called for trial in said court on the 16th day of February, 1892, and the defendant having on said day moved the court for a change of place of trial of said action on the ground of the prejudice of the people of the county of Dodge, and said application was based upon the affidavits of the defendant, Charles E. Cook, and eleven others, which affidavits were duly filed herein, and the court having adjourned the hearing of said motion until

Saturday, the 20th day of February, 1892, with leave to the State to present counter-affidavits, and said motion coming on to be heard said last-named day upon the aforesaid affidavit on the part of the defendant in support of said motion and the affidavit of Colden A. Hart and one hundred and fifty others in opposition to said motion, duly filed herein, and after hearing arguments of J. E. Malone, Esq., and J. V. Quarles, counsel for the defendant, in support of said motion, and W. C. Williams and P. G. Lewis, district attorney, counsel for the State, in opposition thereto, and the court being fully advised in the premises, it is ordered that the place of trial of said action be, and the same hereby is, changed from the county of Dodge, in said State, to the county of Jefferson, in said State, said county of
54 Jefferson being an adjoining county to the county of Dodge, where a fair and impartial trial of said action can be had.

And said defendant, Charles E. Cook, is ordered and required to enter into a recognizance, with good and sufficient sureties, to be approved by the court or by Hon. A. Scott Sloan, judge of said court, in the sum of one thousand dollars, conditioned for the appearance of the said Charles E. Cook in the circuit court of Jefferson county, Wisconsin, aforesaid, at the first day of the next term thereof, and to abide the order of said circuit court of Jefferson county, Wisconsin, and in default of such recognizance that a warrant be issued to the sheriff of Dodge county aforesaid, commanding him to convey the said Charles E. Cook to the jail of Jefferson county aforesaid, the county where he is to be tried, by the first day of the next term of the circuit court to be holden in said county of Jefferson, State of Wisconsin, there to be safely kept by the jailor thereof until discharged by due course of law.

Dated at Juneau, Dodge county, Wisconsin, this 20th day of February, A. D. 1892.

By the court:

[COURT SEAL.] A. SCOTT SLOAN,
Circuit Judge.

55 STATE OF WISCONSIN, } ss:
County of Dodge, }

I, Geo. W. Morse, clerk of the circuit court in and for said State and county, do hereby certify that I have compared the annexed with the original order changing the venue to Jefferson county and requiring recognizance in case of The State of Wisconsin *vs.* Charles E. Cook; that it is a correct transcript therefrom and of the whole thereof as the same remains on file and record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the clerk's office, in the city of Juneau, this 26th day of February, A. D. 1892.

[SEAL.] GEO. W. MORSE, *Clerk,*
By JOHN CLIFFORD,
Deputy Clerk.

56 In Circuit Court, Dodge County.

STATE OF WISCONSIN, Plaintiff,
vs.
CHARLES E. COOK, Defendant. } Indictment No. 5.

The above-entitled cause being at issue in the above-entitled circuit court upon the indictment, duly found and duly filed herein, charging the defendant with the crime of larceny and embezzlement, and said defendant having been duly arraigned and having plead not guilty to said indictment, and said cause having been duly reached and called for trial in said court on the 16th day of February, 1892, and the defendant having on said day moved the court for a change of place of trial of said action on the ground of the prejudice of the people of the county of Dodge, and said application was based upon the affidavits of the defendant, Charles E. Cook, and eleven others, which affidavits were duly filed herein, and the court having adjourned the hearing of said motion until Saturday, the 20th day of February, 1892, with leave to the State to present counter-affidavits, and said motion coming on to be heard said last-named day upon the aforesaid affidavits on the part of the defendant in support of said motion and the affidavit of Colden A. Hart and one hundred and fifty others in opposition to said motion, duly filed herein, and after hearing arguments of J. E. Malone, Esq., and J. V. Quarles, counsel for the defendant, in support of said motion, and W. C. Williams and P. G. Lewis, district attorney, counsel for the State, in opposition thereto, and the court being fully advised in the premises, it is ordered that the place of trial of said action be, and the same hereby is, changed from the county of Dodge, in said State, to the county of Jefferson, in said
57 State, said county of Jefferson being an adjoining county to the county of Dodge, where a fair and impartial trial of said action can be had.

And said defendant, Charles E. Cook, is ordered and required to enter into a recognizance, with good and sufficient sureties, to be approved by the court or by Hon. A. Scott Sloan, judge of said court, in the sum of one thousand dollars, conditioned for the appearance of the said Charles E. Cook in the circuit court of Jefferson county, Wisconsin, aforesaid, at the first day of the next term thereof, and to abide the order of said circuit court of Jefferson county, Wisconsin, and in default of such recognizance that a warrant be issued, directed to the sheriff of Dodge county aforesaid, commanding him to convey the said Charles E. Cook to the jail of Jefferson county aforesaid, the county where he is to be tried, by the first day of the next term of the circuit court to be holden in said county of Jefferson, State of Wisconsin, there to be safely kept by the jailor until discharged by due course of law

Dated at Juneau, Dodge county, Wisconsin, this 20th day of February, A. D. 1892.

By the court:

[COURT SEAL.] A. SCOTT SLOAN,
Circuit Judge.

58 STATE OF WISCONSIN, } ss:
County of Dodge, }

I, Geo. W. Morse, clerk of the circuit court in and for said State and county, do hereby certify that I have compared the annexed with the original order changing the venue to Jefferson county and requiring recogn-ance in case of The State of Wisconsin *vs.* Charles E. Cook; that it is a correct transcript therefrom and of the whole thereof as the same remains on file and record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the clerk's office, in the city of Juneau, this 26th day of February, A. D. 1882.

GEO. W. MORSE, *Clerk,*
[SEAL.] By JOHN CLIFFORD,
Deputy Clerk.

59 In Circuit Court, Dodge County.

STATE OF WISCONSIN, Plaintiff, }
vs. } Indictment No. 6.
CHARLES E. COOK, Defendant. }

The above-entitled cause being at issue in the above-entitled circuit court upon the indictment, duly found and duly filed herein, charging the defendant with the crime of larceny and embezzlement, and said defendant having been duly arraigned and having plead not guilty to said indictment, and said cause having been duly reached and called for trial in said court on the 16th day of February, 1892, and the defendant having on said day moved the court for a change of place of trial of said action on the ground of the prejudice of the people of the county of Dodge, and said application was based upon the affidavits of the defendant, Charles E. Cook, and eleven others, which affidavits were duly filed herein, and the court having adjourned the hearing of said motion until Saturday, the 20th day of February, 1892, with leave to the State to present counter-affidavits, and said motion coming on to be heard said last-named day upon the aforesaid affidavits on the part of the defendant in support of said motion and the affidavit of Colden A. Hart and one hundred and fifty others in opposition to said motion, duly filed herein, and after hearing arguments of J. E. Malone, Esq., and J. V. Quarles, counsel for the defendant, in support of said motion, and W. C. Williams and P. G. Lewis, district attorney, counsel for the State, in opposition thereto, and the court being fully advised in the premises, it is ordered that the place of trial of said action be, and the same hereby is, changed from the county of Dodge, in said State, to the county of Jefferson, in said
State, said county of Jefferson being an adjoining county to
60 the county of Dodge, where a fair and impartial trial of said action can be had.

And said defendant, Charles E. Cook, is ordered and required to enter a recognizance, with good and sufficient sureties, to be approved by the court or by Hon. A. Scott Sloan, judge of said court, in the sum

of one thousand dollars, conditioned for the appearance of the said Charles E. Cook in the circuit court of Jefferson county, Wisconsin, aforesaid, at the first day of the next term thereof, and to abide the order of said circuit court of Jefferson county, Wisconsin, and in default of such recognizance that a warrant be issued to the sheriff of Dodge county aforesaid, commanding him to convey the said Charles E. Cook to the jail at Jefferson county aforesaid, the county where he is to be tried, by the first day of the next term of the circuit court to be holden in said county of Jefferson, State of Wisconsin, there to be safely kept by the jailor thereof until discharged by due course of law.

Dated at Juneau, Dodge county, Wisconsin, this 20th day of February, A. D. 1892.

By the court:

[COURT SEAL.] A. SCOTT SLOAN,
Circuit Judge.

61 STATE OF WISCONSIN, } *ss:*
County of Dodge, }

I, Geo W. Morse, clerk of the circuit court in and for said State and county, do hereby certify that I have compared the annexed with the original order changing venue to Jefferson county — requiring recognizance in case of The State of Wisconsin *v.* Charles E. Cook; that it is a correct transcript therefrom and of the whole thereof as the same remains on file and record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the clerk's office, in the city of Juneau, this 26th day of February, A. D. 1892.

GEO. W. MORSE, *Clerk,*
[SEAL.] By JOHN CLIFFORD,
Deputy Clerk.

62 In Circuit Court, Dodge County.

STATE OF WISCONSIN, Plaintiff,
vs.
CHARLES E. COOK, Defendant. } Indictment No. 7.

The above-entitled cause being at issue in the above-entitled circuit court upon the indictment, duly found and duly filed herein, charging the defendant with the crime of larceny and embezzlement, and said defendant having been duly arraigned and having plead not guilty to said indictment, and said cause having been duly reached and called for trial in said court on the 16th day of February, 1892, and the defendant having on said day moved the court for a change of place of trial of said action on the ground of the prejudice of the people of the county of Dodge, and said application was based upon the affidavits of the defendant, Charles E. Cook, and eleven others, which affidavits were duly filed herein, and the court having adjourned the hearing of said motion until Saturday, the 20th day of February, 1892, with leave to the State to p-esent counter-affidavits,

and said motion coming on to be heard said last-named day upon the aforesaid affidavits on the part of the defendant in support of said motion and the affidavit of Colden A. Hart and one hundred and fifty others in opposition to said motion, duly filed herein, and after hearing arguments of J. E. Malone, Esq., and J. V. Quarles, counsel for the defendant, in support of said motion, and W. C. Williams and P. G. Lewis, district attorney, counsel for the State, in opposition thereto, and the court being fully advised in the premises, it is ordered that the place of trial of said action be, and the same hereby is, changed from the county of Dodge, in said State, to the county of Jefferson, in said State, said county of Jeffer-
63 son being an adjoining county to the county of Dodge, where a fair and impartial trial of said action can be had.

And said defendant, Charles E. Cook, is ordered and required to enter into a recognizance, with good and sufficient sureties, to be approved by the court or by Hon. A. Scott Sloan, judge of said court, in the sum of one thousand dollars, conditioned for the appearance of the said Charles E. Cook in the circuit court of Jefferson county, Wisconsin, aforesaid, at the first day of the next term thereof, and to abide the order of said circuit court of Jefferson county, Wisconsin, and in default of such recognizance that a warrant be issued to the sheriff of Dodge county aforesaid, commanding him to convey the said Charles E. Cook to the jail of Jefferson county aforesaid, the county where he is to be tried, by the first day of the next term of the circuit court to be holden in said county of Jefferson, State of Wisconsin, there to be safely kept by the jailor thereof until discharged by due course of law.

Dated at Juneau, Dodge county, Wisconsin, this 20th day of February, A. D. 1892.

By the court:

[COURT SEAL.] A. SCOTT SLOAN,
Circuit Judge.

64 STATE OF WISCONSIN, } *ss*:
County of Dodge, }

I, Geo. W. Morse, clerk of the circuit court in and for said State and county, do hereby certify that I have compared the annexed with the original warrant of commitment on default of recognizance on change of venue in the case of The State of Wisconsin *v.* Charles E. Cook; that it is a correct transcript therefrom and of the whole thereof as the same remains on file and record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the clerk's office, in the city of Juneau, this 26th day of February, A. D. 1892.

GEO. W. MORSE, *Clerk*,
[SEAL.] By JOHN CLIFFORD,
Deputy Clerk.

65 In Circuit Court, Dodge County.

STATE OF WISCONSIN, Plaintiff,
vs.
CHARLES E. COOK, Defendant. } Indictment No. 1.

STATE OF WISCONSIN, *Dodge County,* } *ss:*

The State of Wisconsin to the sheriff of Dodge county:

Whereas the above-named Charles E. Cook, the defendant above named, is charged by indictment, duly found and duly filed in said court, with the crime of fraudulently receiving deposits under section 4541 of the Revised Statutes of the State of Wisconsin, and said defendant, Charles E. Cook, having been duly arraigned and having pleaded not guilty to said indictment, and said cause being at issue and having been duly reached and called for trial in said court on the 16th day of February, 1892, and said defendant having on said day moved the court for a change of the place of trial of said action on the ground of the prejudice of the people of Dodge county, and upon full hearing and consideration of the affidavits filed in support of and also against said motion and the arguments of counsel upon both sides, and the said court having on the 20th day of February, 1892, made an order changing the place of trial of said action from the county of Dodge aforesaid to the county of Jefferson, in said State, said county of Jefferson being an adjoining county, where a fair and impartial trial of said action can be had, as provided by law, and said court having ordered and required the said de-
66 fendant, Charles E. Cook, to enter into a recognizance, with good and sufficient sureties, to be approved by the court or by the Hon. A. Scott Sloan, judge of said court, in the sum of one thousand dollars, conditioned for the appearance of the said Charles E. Cook in the circuit court of Jefferson county, Wisconsin, at the first day of the next term thereof, and to abide the order of said circuit court of Jefferson county, Wisconsin, until discharged by due course of law, and the said Charles E. Cook, not having given bail as by the court required and ordered, *and* is now in default of such recognizance:

Now, therefore, you are hereby commanded the said defendant, Charles E. Cook, to safely keep in default of such recognizance in your custody, in the county jail of Dodge county aforesaid, until the next term of the circuit court of Jefferson county aforesaid, when a trial of said case may be there had, and you are further commanded to convey the said Charles E. Cook to the jail of Jefferson county aforesaid by the first day of the next term of the circuit court, to be holden in said county of Jefferson, there to be safely kept by the jailor thereof until discharged by due course of law.

Witness the Hon. A. Scott Sloan, judge of our said circuit court, at the court-house, in Juneau, in our said county, on the 20th day of February, A. D. 1892.

[COURT SEAL.]

GEO. W. MORSE,
Clerk of said Circuit Court.

67 STATE OF WISCONSIN, } ss:
County of Dodge, }

I, Geo. W. Morse, clerk of the circuit court in and for said State and county, do hereby certify that I have compared the annexed with the original warrant of commitment on default of recognizance on change of venue in case of The State of Wisconsin *vs.* Charles E. Cook; that it is a correct transcript therefrom and of the whole thereof as the same remains on file and record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the clerk's office, in the city of Juneau, this 26th day of February, A. D. 1892.

GEO. W. MORSE, *Clerk,*
[SEAL.] By JOHN CLIFFORD,
Deputy Clerk.

68 In Circuit Court, Dodge County.

STATE OF WISCONSIN, Plaintiff, }
vs. } Indictment No. 2.
CHARLES E. COOK, Defendant. }

STATE OF WISCONSIN, } ss:
Dodge County, }

The State of Wisconsin to the sheriff of Dodge county:

Whereas the above-named Charles E. Cook, the defendant above named, is charged by indictment, duly found, made, and duly filed in said court, with the crime of fraudulently receiving deposits under section 4541 of the Revised Statutes of the State of Wisconsin, and said defendant, Charles E. Cook, having been duly arraigned and having pleaded not guilty to said indictment, and said cause being at issue and having been duly reached and called for trial in said court on the 16th day of February, 1892, and said defendant having on said day moved the court for a change of the place of trial of said action on the ground of the prejudice of the people of Dodge county, and upon full hearing and consideration of the affidavits filed in support of and also against said motion and the arguments of counsel upon both sides, and the said court having on the 20th day of February, 1892, made an order changing the place of trial of said action from the county of Dodge aforesaid to the county of Jefferson, in said State, said county of Jefferson being an adjoining county, where a fair and impartial trial of said action can be had, as provided by law, and said court having ordered and required the said defendant, Charles E. Cook, to enter into a

69 recognizance, with good and sufficient sureties, to be approved by the court or by the Hon. A. Scott Sloan, judge of said court, in the sum of one thousand dollars, conditioned for the appearance of the said Charles E. Cook in the circuit court of Jefferson county, Wisconsin, at the first day of the next term thereof, and to abide the order of said circuit court of Jefferson county, Wisconsin, until discharged by due course of law, and the said Charles E.

Cook, not having given bail, as by said court required and ordered, *and* is now in default of such recognizance:

Now, therefore, you are hereby commanded the said defendant, Charles E. Cook, to safely keep in default of such recognizance in your custody, in the county jail of Dodge county aforesaid, until the next term of the circuit court of Jefferson county aforesaid, when a trial of said case may be there had, and you are further commanded to convey the said Charles E. Cook to the jail of Jefferson county aforesaid by the first day of the next term of the circuit court, to be holden in said county of Jefferson, there to be safely kept by the jailor thereof until discharged by due course of law.

Witness the Hon. A. Scott Sloan, judge of our said circuit court, at the court-house, in Juneau, in our said county, on the 20th day of February, A. D. 1892.

[COURT SEAL.] GEO. W. MORSE,
Clerk of said Circuit Court.

70 STATE OF WISCONSIN, } *ss:*
County of Dodge, }

I, Geo. W. Morse, clerk of the circuit court in and for said State and county, do hereby certify that I have compared the annexed with the original warrant of commitment on default of recognizance on change of venue in case of The State of Wisconsin *vs.* Charles E. Cook; that it is a correct transcript therefrom and of the whole thereof as the same remains on file and record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the clerk's office, in the city of Juneau, this 26th day of February, A. D. 1892.

[SEAL.] GEO. W. MORSE, *Clerk,*
By JOHN CLIFFORD,
Deputy Clerk

71 In Circuit Court, Dodge County.

STATE OF WISCONSIN, Plaintiff, }
vs. } Indictment No. 3.
CHARLES E. COOK, Defendant. }

STATE OF WISCONSIN, } *ss:*
Dodge County, }

The State of Wisconsin to the sheriff of Dodge county:

Whereas the above-named Charles E. Cook, the defendant above named, is charged by indictment, duly found, made, and duly filed in said court, with the crime of fraudulently receiving deposits under section 4541 of the Revised Statutes of the State of Wisconsin, and said defendant, Charles E. Cook, having been duly arraigned and having pleaded not guilty to said information, and said cause being at issue and having been duly reached and called for trial in said court on the 16th day of February, 1892, and said defendant having on said day moved the court for a change of the place of

trial of said action on the ground of the prejudice of the people of Dodge county, and upon full hearing and consideration of the affidavits filed in support of and also against said motion and the arguments of counsel upon both sides, and the said court having on the 20th day of February, 1892, made an order changing the place of trial of said action from the county of Dodge aforesaid to the county of Jefferson, in said State, said county of Jefferson being an adjoining county, where a fair and impartial trial of said action can be had, as provided by law, and said court having ordered and required the said defendant, Charles E. Cook, to enter into a
72 recognizance, with good and sufficient sureties, to be approved by the court or by the Hon. A. Scott Sloan, judge of said court, in the sum of one thousand dollars, conditioned for the appearance of the said Charles E. Cook in the circuit court of Jefferson county, Wisconsin, at the first day of the next term thereof, and to abide the order of said circuit court of Jefferson county, Wisconsin, until discharged by due course of law, and the said Charles E. Cook, not having given bail as by said court required and ordered, *and* is now in default of such recognizance:

Now, therefore, you are hereby commanded the said defendant, Charles E. Cook, to safely keep, in default of such recognizance, in your custody, in the county jail of Dodge county aforesaid, until the next term of the circuit court of Jefferson county aforesaid, when a trial of said case may be there had; and you are further commanded to convey the said Charles E. Cook to the jail of Jefferson county aforesaid by the first day of the next term of the circuit court, to be holden in said county of Jefferson, there to be safely kept by the jailor thereof until discharged by due course of law.

Witness the Hon. A. Scott Sloan, judge of our said circuit court, at the court-house, in Juneau, in our said county, on the 20th day of February, A. D. 1892.

[COURT SEAL.] GEO. W. MORSE,
Clerk of said Circuit Court.

73 STATE OF WISCONSIN, }
County of Dodge, } *ss:*

I, Geo. W. Morse, clerk of the circuit court in and for said State and county, do hereby certify that I have compared the annexed with the original warrant of commitment on default of recognizance on change of venue in case of The State of Wisconsin *vs.* Charles E. Cook; that it is a correct transcript therefrom and of the whole thereof as the same remains on file and record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the clerk's office, in the city of Juneau, this 26th day of February, A. D. 1892.

GEO. W. MORSE, *Clerk*,
[SEAL.] By JOHN CLIFFORD,
Deputy Clerk.

74 In Circuit Court, Dodge County.

STATE OF WISCONSIN, Plaintiff,
vs.
CHARLES E. COOK, Defendant. } Indictment No. 4.

STATE OF WISCONSIN, }
Dodge County, } *ss:*

The State of Wisconsin to the sheriff of Dodge county:

Whereas the above-named Charles E. Cook, the defendant above named, is charged by indictment, duly found and duly filed in said court, with the crime of fraudulently receiving deposits under § 4541 of the Revised Statutes of the State of Wisconsin, and said defendant, Charles E Cook, having been duly arraigned and having pleaded not guilty to said information, and said cause being at issue and having been duly reached and called for trial in said court on the 16th day of February, 1892, and said defendant having on said day moved the court for a change of the place of trial of said action on the ground of the prejudice of the people of Dodge county, and upon full hearing and consideration of the affidavits filed in support of and also against said motion and the arguments of counsel upon both sides, and the said court having on the 20th day of February, 1892, made an order changing the place of trial of said action from the county of Dodge aforesaid to the county of Jefferson, in said State, said county of Jefferson being an adjoining county, where a fair and impartial trial of said action can be had, as provided by law, and said court having ordered and required said defendant, Charles E. Cook, to enter into a recognizance, with good and sufficient sureties, to be approved by the court or by the Hon. A. Scott Sloan, judge of said court, in the sum of one thousand dollars, conditioned for the appearance of the said Charles E. Cook in the circuit court of Jefferson county, Wisconsin, at the first day of the next
75 term thereof, and to abide the order of said circuit court of Jefferson county, Wisconsin, until discharged by due course of law, and the said Charles E. Cook, not having given bail, as by said court required and ordered, *and* is now in default of such recognizance:

Now, therefore, you are hereby commanded the said defendant, Charles E. Cook, to safely keep, in default of such recognizance, in your custody, in the county jail of Dodge county aforesaid, until the next term of the circuit court of Jefferson county aforesaid, when a trial of said cause may be there had; and you are further commanded to convey the said Charles E. Cook to the jail of Jefferson county aforesaid by the first day of the next term of the circuit court to be holden in said county of Jefferson, there to be safely kept by the jailor thereof until discharged by due course of law.

Witness the Hon. A. Scott Sloan, judge of our said circuit court, at the court-house, in Juneau, in our said county, on the 20th day of February, A. D. 1892.

GEO. W. MORSE,
Clerk of said Circuit Court.

[COURT SEAL.]

76 STATE OF WISCONSIN, } ss:
County of Dodge, }

I, Geo. W. Morse, clerk of the circuit court in and for said State and county, do hereby certify that I have compared the annexed with the original warrant of commitment on default of recognizance on change of venue in case of The State of Wisconsin *vs.* Charles E. Cook; that it is a correct transcript therefrom and of the whole thereof as the same remains on file and record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the clerk's office, in the city of Juneau, this 26th day of February, A. D. 1892.

GEO. W. MORSE, *Clerk,*
[SEAL.] By JOHN CLIFFORD, *Deputy Clerk.*

77 In Circuit Court, Dodge County.

STATE OF WISCONSIN, Plaintiff, }
vs. } Indictment No. 5.
CHARLES E. COOK, Defendant. }

STATE OF WISCONSIN, } ss:
Dodge County, }

The State of Wisconsin to the sheriff of Dodge county:

Whereas the above-named Charles E. Cook, the defendant above named, is charged by indictment, duly found and duly filed in said court, with the crime of larceny and embezzlement, and said defendant, Charles E. Cook, having been duly arraigned and having pleaded not guilty to said information, and said cause being at issue and having been duly reached and called for trial in said court on the 16th day of February, 1892, and said defendant having on said day moved the court for a change of the place of trial of said action on the ground of the prejudice of the people of Dodge county, and upon full hearing and consideration of the affidavits filed in support of and also against said motion and the arguments of counsel on both sides, and the said court having, on the 20th day of February, 1892, made an order changing the place of trial of said action from the county of Dodge aforesaid to the county of Jefferson, in said State, said county of Jefferson being an adjoining county, where a fair and impartial trial of said action can be had, as provided by law, and said court having ordered and required said defendant, Charles E. Cook, to enter into a recognizance, with good and sufficient sureties, to be approved by the court or by the Hon. A. Scott Sloan, judge of said court, in the sum of one thousand dollars, conditioned for the appearance of the said Charles E. Cook in the circuit court of Jefferson county, Wisconsin, at the first day of
78 the next term thereof, and to abide the order of said circuit court of Jefferson county, Wisconsin, until discharged by due course of law, and the said Charles E. Cook, not having given bail, as by said court required and ordered, *and* is now in default of such recognizance:

Now, therefore, you are hereby commanded the said defendant, Charles E. Cook, to safely keep in default of such recognizance in your custody, in the county jail of Dodge county aforesaid, until the next term of the circuit court of Jefferson county aforesaid, when a trial of said cause may be there had, and you are further commanded to convey the said Charles E. Cook to the jail of Jefferson county aforesaid by the first day of the next term of the circuit court, to be holden in said county of Jefferson, there to be safely kept by the jailor thereof until discharged by due course of law.

Witness the Hon. A. Scott Sloan, judge of our said circuit court, at the court-house, in Juneau, in our said county, on the 20th day of February, A. D. 1892.

[COURT SEAL.]

GEO. W. MORSE,
Clerk of said Circuit Court.

79 STATE OF WISCONSIN, } ss :
County of Dodge, }

I, Geo. W. Morse, clerk of the circuit court in and for said State and county, do hereby certify that I have compared the annexed with the original warrant of commitment on default of recognizance on change of venue in action of The State of Wisconsin *vs.* Charles E. Cook; that it is a correct transcript therefrom and of the whole thereof as the same remains on file and record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the clerk's office, in the city of Juneau, this 26th day of February, A. D. 1892.

[SEAL.]

GEO. W. MORSE, *Clerk*,
By JOHN CLIFFORD,
Deputy Clerk.

80 Circuit Court, Dodge County.

STATE OF WISCONSIN, Plaintiff,
vs.
CHARLES E. COOK, Defendant. } Indictment No. 6.

STATE OF WISCONSIN, } ss :
Dodge County, }

The State of Wisconsin to the sheriff of Dodge county :

Whereas the above-named Charles E. Cook, the defendant above named, is charged by indictment, duly found and duly filed in said court, with the crime of larceny and embezzlement, and said defendant, Charles E. Cook, having been duly arraigned and having pleaded not guilty to said indictment, and said cause being at issue and having been duly reached and called for trial in said court on the 16th day of February, 1892, and said defendant having on said day moved the court for a change of the place of trial of said action on the ground of the prejudice of the people of Dodge county, and upon full hearing and consideration of the affidavits filed in support of and also against said motion and the arguments of counsel upon

both sides, and the said court having on the 20th day of February, 1892, made an order changing the place of trial of said action from the county of Dodge aforesaid to the county of Jefferson, in said State, said county of Jefferson being an adjoining county, where a fair and impartial trial of said action can be had, as provided by law, and said court having ordered and required said defendant, Charles E. Cook, to enter into a recognizance, with good and sufficient sureties, to be approved by the court or by the Hon. A. Scott Sloan, judge of said court, in the sum of one thousand dollars, conditioned for the appearance of the said Charles E. Cook in the circuit court of Jefferson county, Wisconsin, at the first day of
81 the next term thereof, and to abide the order of said circuit court of Jefferson county, Wisconsin, until discharged by due course of law, and the said Charles E. Cook, not having given bail, as by said court required and ordered, *and* is now in default of such recognizance:

Now, therefore, you are hereby commanded the said defendant, Charles E. Cook, to safely keep in default of such recognizance in your custody, in the county jail of Dodge county aforesaid, until the next term of the circuit court of Jefferson county aforesaid, when a trial of said cause may be there had, and you are further commanded to convey the said Charles E. Cook to the jail of Jefferson county aforesaid by the first day of the next term of the circuit court, to be holden in said county of Jefferson, there to be safely kept by the jailor thereof until discharged by due course of law.

Witness the Hon. A. Scott Sloan, judge of our said circuit court, at the court-house, in Juneau, in our said county, on the 20th day of February, A. D. 1892.

[COURT SEAL.] GEO. W. MORSE,
Clerk of said Circuit Court.

82 STATE OF WISCONSIN, } *ss:*
County of Dodge, }

I, Geo. W. Morse, clerk of the circuit court in and for said State and county, do hereby certify that I have compared the annexed with the original warrant of commitment on default of recognizance on change of venue in case of The State of Wisconsin *vs.* Charles E. Cook; that it is a correct transcript therefrom and of the whole thereof as the same remains on file and record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the clerk's office, in the city of Juneau, this 26th day of February, A. D. 1892.

[SEAL.] GEO. W. MORSE, *Clerk*,
By JOHN CLIFFORD,
Deputy Clerk.

83 In Circuit Court, Dodge County.

STATE OF WISCONSIN, Plaintiff,
vs.
CHARLES E. COOK, Defendant. } Indictment No. 7.

STATE OF WISCONSIN, }
Dodge County, } *ss:*

The State of Wisconsin to the sheriff of Dodge county:

Whereas the above-named Charles E. Cook, the defendant above named, is charged, by indictment duly found and duly filed in said court, with the crime of larceny and embezzlement, and said defendant, Charles E. Cook, having been duly arraigned and having pleaded not guilty to said indictment, and said cause being at issue and having been duly reached and called for trial in said court on the 16th day of February, 1892, and said defendant having on said day moved the court for a change of the place of trial of said action on the ground of the prejudice of the people of Dodge county, and upon full hearing and consideration of the affidavits filed in support of and also against said motion and the arguments of counsel upon both sides, and the said court having, on the 20th day of February, 1892, made an order changing the place of trial of said action from the county of Dodge aforesaid to the county of Jefferson, in said State, said county of Jefferson being an adjoining county, where a fair and impartial trial of said action can be had, as provided by law, and said court having ordered and required said defendant, Charles E. Cook, to enter into a recognizance, with good and sufficient sureties, to be approved by the court or by the Hon. A. Scott Sloan, judge of said court, in the sum of one thousand dollars, conditioned for the appearance of the said Charles E. Cook in
84 the circuit court of Jefferson county, Wisconsin, at the first day of the next term thereof, and to abide the order of said circuit court of Jefferson county, Wisconsin, until discharged by due course of law, and the said Charles E. Cook, not having given bail, as by said court required and ordered, *and* is now in default of such recognizance:

Now, therefore, you are hereby commanded the said defendant, Charles E. Cook, to safely keep in default of such recognizance in your custody, in the county jail of Dodge county aforesaid, until the next term of the circuit court of Jefferson county aforesaid, when a trial of said cause may be there had, and you are further commanded to convey the said Charles E. Cook to the jail of Jefferson county aforesaid by the first day of the next term of the circuit court, to be holden in said county of Jefferson, there to be safely kept by the jailor thereof until discharged by due course of law.

Witness the Hon. A. Scott Sloan, judge of our said circuit court, at the court-house, in Juneau, in our said county, on the 20th day of February, A. D. 1892.

[COURT SEAL.]

GEO. W. MORSE,
Clerk of said Circuit Court.

85 March 5, 1892.—Answer of petitioner to return of respondent filed, as follows:

In the Circuit Court of the United States for the Eastern District of Wisconsin.

In Re CHAS. E. COOK.

Petition for Habeas Corpus.

To the honorable the judges of the circuit court of the United States for the eastern district of Wisconsin:

The petitioner, Charles E. Cook, in answer to the return of Colden A. Hart, sheriff of Dodge county, State of Wisconsin, to the writ of *habeas corpus* directed to him in the above matter, denies that the said Colden A. Hart obtained possession of the body of this petitioner under and by virtue of the information filed against the petitioner on the 22nd day of November, 1891, or under or by virtue of any of the several indictments or informations in said return set forth, mentioned, or described, or under or by virtue of any voluntary surrender by this petitioner of his body to said Colden A. Hart, acting as sheriff as aforesaid or in any other capacity, or that he, the said petitioner, was at the coming of the writ of *habeas corpus* heretofore issued herein to said respondent lawfully held under or by virtue of any of the alleged proceedings set out or referred to in the said return.

And the said Charles E. Cook, in further answering said return, shows that he was on the 20th day of June, A. D. 1890, and had been for many years prior thereto continuously and
86 ever since said date and at the date of the suing out of the aforesaid writ herein was and now is a citizen of the United States and of the State of Illinois, domiciled and residing in the city of Chicago in said State; that at said time he was, in connection with one Frank Leake, the owner of a banking business conducted as a partnership in the name and style of the Bank of Juneau, at the town of Juneau, in Dodge county, Wisconsin, which business was managed largely by the resident partner, Frank Leake, and conducted by him with the aid of clerks and subordinates; that at the same time he was a part owner of a similar business at Hartford, Washington county, Wisconsin, which was conducted under the name of the Bank of Hartford and also conducted largely by the resident partners and clerks, your petitioner being at the same time engaged in business in Chicago and remaining there most of his time; that by reason of the seizure of the Park National Bank of Chicago by the Comptroller of the Currency on said 20th day of June, A. D. 1890, in which bank your petitioner was a large shareholder, the said banks in Wisconsin were compelled to suspend and did suspend business immediately thereafter, but have since paid all their liabilities save and except the sum of nine thousand dollars, the total liabilities at the time of the said suspension being forty-five thousand dollars or more.

That your petitioner has been and now is imprisoned and re-

strained of his liberty by Colden A. Hart, sheriff of Dodge county, State of Wisconsin, at Juneau, in said county and State, under color of the authority of the Constitution and laws of the United
87 States relating to the return of fugitives from justice to the State or Territory from which they fled, and that said Colden A. Hart obtained the custody of your petitioner by virtue of proceedings under said act and still has such custody under and by virtue of such proceedings and the warrant issued thereunder and not otherwise; which proceedings for the extradition of your petitioner were in the words and figures following, to wit:

UNITED STATES OF AMERICA, }
The State of Wisconsin. }

George W. Peck, governor, to his excellency the governor of the State of Illinois:

Whereas it appears by the annexed papers, which I certify to be authentic, that Charles E. Cook stands charged by affidavit with the crime of illegal banking, committed in the county of Dodge, in this State, and that he has fled from the justice of this State and taken refuge in the State of Illinois:

Now, therefore, pursuant to the provisions of the Constitution and the laws of the United States in such case made and provided, I do hereby require that the said Charles E. Cook be apprehended and delivered to Colden A. Hart, who is duly authorized to receive and convey him to the State of Wisconsin, here to be dealt with according to law.

In testimony whereof I have hereunto set my hand (seal) and caused the great seal of the State of Wisconsin to be affixed.

Done, at the city of Madison, this ninth day of March, in the year of our Lord one thousand eight hundred and ninety-one.

GEO. W. PECK.

By the governor:
T. J. CUNNINGHAM,
Secretary of State.

88 STATE OF WISCONSIN, } *ss*:
County of Dodge, }

I, P. G. Lewis, district attorney for said county, hereby make application for a requisition for Charles E. Cook.

And I hereby certify that the full name of the person for whom extradition is asked is Charles E. Cook and the name of the agent proposed to receive and convey the said Charles E. Cook to this county is Colden A. Hart; that in my opinion the ends of public justice require that the said Charles E. Cook be brought to this State for trial at the public expense; that I believe I have sufficient evidence to secure the conviction of said Charles E. Cook; that said Colden A. Hart, the person named as agent, is the sheriff of said county of Dodge and is a proper person, and that he has no private interest in the arrest of said Charles E. Cook.

That on or about the third day of July, A. D. 1890, I made application for a requisition on the governor of the State of Illinois for said Charles E. Cook, who was at that time at the city of Chicago, in said State of Illinois. Said requisition was granted and the governor of said State of Illinois thereupon, on or about the 5th day of July, A. D. 1890, issued his warrant for the arrest of said Charles E. Cook and immediately, to wit, on the 5th or 6th day of July, A. D. 1890, delivered the same to the sheriff of Cook county, in the said State of Illinois, but before the same was executed the said Charles E. Cook fled from said city of Chicago and said State of Illinois and could not be found, although diligent search was made for him; that in order to avoid arrest said Charles E. Cook fled to La Porte, in the State of Indiana, from there to Boston, in the State of Massachusetts, and from there to Europe, where he remained until a short time ago, when he returned to said city of Chicago, in said State of Illinois, where he now is, as I am informed and believe, and because he could not be found and has not been arrested for this offense I now make this application for a requisition; that said Charles E. Cook is not known to be under either civil or criminal arrest in the said State of Illinois or elsewhere; that this application is not made for the purpose of enforcing the collection of a debt or for any private purpose whatever, and if the requisition applied for be granted the criminal proceedings shall not be used for any of such objects.

That said Charles E. Cook is charged with illegal and unauthorized banking and fraudulently receiving deposits at the city of Juneau, in the county of Dodge and State of Wisconsin, in the year 1890, as more fully appears from the complaint, a copy of which is hereto attached, under section No. 4541 of the Revised Statutes of the State of Wisconsin.

That said Charles E. Cook is a fugitive from justice and has fled from the justice of the State of Wisconsin and avoided arrest up to this time.

Witness my hand, at the city of Juneau, in said county of Dodge, this 5th day of March, A. D. 1891.

P. G. LEWIS,
District Attorney for Dodge County, Wisconsin.

89 STATE OF WISCONSIN, } ss:
County of Dodge, }

George W. Morse, Thomas A. McCallon, C. A. Christiansen, and T. J. McCallon, being each severally sworn, each for himself deposes and says that he is a resident of the city of Juneau, in said county, and has been such resident for more than five years last past; that he makes this affidavit to be used on an application for a requisition for one Charles E. Cook for illegal and unauthorized banking at said city of Juneau.

That said Charles E. Cook and one Frank Leake did, on or about the 7th day of May, 1889, open an office or place of business at Juneau aforesaid, in said county of Dodge, and called and styles

such office or place of business the "Bank of Juneau," and immediately entered upon and engaged in a general banking, brokerage, exchange, and deposit business, having a pretended capital of ten thousand dollars, and continued in such business, soliciting and receiving deposits and calling their institution a bank, up to and including the 20th day of June, 1890, when said bank closed its doors; that during all of said time said Charles E. Cook had the general supervision of the business of said bank and was the principal owner thereof, and all business therein was transacted by him personally or by his direction by one G. D. Richardson, who was acting as his agent and as the agent of said Leake; that said Cook frequently visited said bank and well knew the condition thereof at all times; that from the books of said so-called banking concern it now appears and the
90 fact is that from the 6th day of January, 1890, to the 20th day of June, 1890, the said Charles E. Cook, by the inducement and pretenses held out by the said bank, received deposits of money, notes, bills, and paper circulating as money, the property of citizens of said county, to the amount and of the value of $25,000.00; that said amount was taken, received, and held on deposit in said bank by said Charles E. Cook and said Leake by the express order and direction of said Cook, and that such amount of deposits appears on said 20th day of June, 1890, as due depositors upon the books of said bank, and the same is now due such depositors and no part thereof has been paid; that an examination of the books of said bank shows and the fact is that at the time of the closing of its doors, on the 20th day of June, 1890, its assets consisted of cash, $3,048.00, and securities to the amount of $2,000.00; that said Charles E. Cook, while receiving the deposits as aforesaid, drew out of the said bank all of the pretended capital stock, if any was ever paid in, and also all of the deposits of said citizens doing business thereat, except the aforesaid sum of $5,048.00 in money and securities, which *was* in the bank at the time it closed; that on or about the 23d day of June, 1890, said Cook and Leake made an assignment of their property for the benefit of their creditors; that besides the liabilities of said bank to its depositors it was at and before the time of its closing as aforesaid and still is indebted on notes given by said Cook to the amount of several thousand dollars; that deponents have each examined into the financial condition of said bank
91 and of said Cook and Leake and each of them, and from their own books and business it clearly appears and the fact is that said Charles E. Cook and Frank Leake and each of them, as well as the said "Bank of Juneau," were on the 6th day of January, 1890, and ever since have been and now are insolvent and had good reason to know and said Cook and Leake did each of them know that they were and each of them and the said bank was on said 6th day of January, 1890, and ever since have been unsafe and insolvent; that the aforesaid insolvency was well known to said Cook ever since said 6th day of January, 1890; that on the 20th day of June, 1890, at about four o'clock in the afternoon of that day, at said county of Dodge, said Cook and Leake did, as such bankers, receive a deposit in said bank from one Herman Becker to the amount of $175.00 in

money; that said deposit was received by the order and direction of said Charles E. Cook.

That at the time of receiving said deposit said Charles E. Cook well knew and had good reason to know that he, the said Cook, the said Leake, the firm of Charles E. Cook and Company, and said bank were all insolvent and unsafe.

GEO. W. MORSE.
T. A. McCALLON.
C. A. CHRISTIANSEN.
T. J. McCALLON.

Subscribed and sworn to before me this 5th day of March, A. D. 1891.

THEO. P. HEMMY,
Justice of the Peace.

STATE OF WISCONSIN, } *ss:*
County of Dodge, }

92 I, Theodore P. Hemmy, the justice of the peace before whom the foregoing affidavit was taken, being a justice of the peace in and for the city of Juneau, in said county, hereby certify that I am well acquainted with George W. Morse, Thomas A. McCallon, C. A. Christiansen, and T. J. McCallon, the persons who made said affidavit, and know that they are persons to be believed.

Witness my hand, at Juneau, in said county, this 5th day of March, A. D. 1891.

THEO. P. HEMMY,
Justice of the Peace.

STATE OF WISCONSIN, } *ss:*
County of Dodge, }

OFFICE OF CLERK OF CIRCUIT COURT.

I, Geo. W. Morse, clerk of the circuit court of the county of Dodge, in the State of Wisconsin, the said court being a court of record and having a seal, do hereby certify that Theo. P. Hemmy, Esquire, whose name appears subscribed to the annexed instrument, was at the date thereof a justice of the peace of said county, duly elected and qualified and empowered by the laws of said State to administer oaths and take acknowledgments of deeds, and that to his acts and attestations as such full faith and credit are and ought to be given in the court and out. I further certify that I verily believe said signature purporting to be his is genuine, and that said instrument is executed and acknowledged according to the laws of said State.

In witness whereof I have hereunto set my hand and
[SEAL.] affixed the seal of said court, at Juneau, in said county and State, on said 5th day of March, A. D. 1891.

93 GEO. W. MORSE,
Clerk of Circuit Court as Aforesaid.

STATE OF WISCONSIN, } ss :
County of Dodge, }

George W. Morse, being duly sworn, says that he is a resident of said county and is the complaining witness in the case of The State of Wisconsin against Charles E. Cook for illegal and unauthorized banking; that he makes this affidavit to be used on an application for a requisition for said Charles E. Cook; that the application is made in good faith for the sole purpose of punishing said Cook, and that he does not desire or expect to use the prosecution for the purpose of collecting a debt or for any private purpose, and will not, directly or indirectly, use the same for any of said purposes.

GEO. W. MORSE.

Subscribed and sworn to before me this 5th day of March, A. D. 1891.

THEO. P. HEMMY,
Justice of the Peace.

STATE OF WISCONSIN, } ss :
County of Dodge, }

I, Theodore P. Hemmy, the justice of the peace before whom the foregoing affidavit was taken, being a justice of the peace in and for the city of Juneau, in said county, hereby certify that I am
94 well acquainted with George W. Morse, the person who made the said affidavit, and know that he is a person to be believed.

Witness my hand, at Juneau, in said county, this 5th day of March, A. D. 1891.

THEO. P. HEMMY,
Justice of the Peace.

STATE OF WISCONSIN, } ss :
County of Dodge, }

OFFICE OF CLERK OF CIRCUIT COURT.

I, Geo. W. Morse, clerk of the circuit court of the county of Dodge, in the State of Wisconsin, the said court being a court of record and having a seal, do hereby certify that Theo. P. Hemmy, Esquire, whose name appears subscribed to the annexed instrument, was at the date thereof a justice of the peace of said county, duly elected and qualified and empowered by the laws of said State to administer oaths and take acknowledgments of deeds, and that to his acts and attestations as such full faith and credit are and ought to be given in the court and out. I further certify that I verily believe said signature purporting to be his is genuine, and that said instrument is executed and acknowledged according to the laws of the said State.

In witness whereof I have hereunto set my hand and
[SEAL.] affixed the said — of said court, at Juneau, in said county and State, on said 5th day of March. A. D. 1891.

GEO. W. MORSE,
Clerk of Circuit Court as Aforesaid.

95 STATE OF WISCONSIN, } ss:
County of Dodge, }

Bernhard Hauser, being duly sworn, says that during all of the year 1890 he was the sheriff of said county; that on or about the third day of July, 1890, a requisition was issued by the governor of the State of Wisconsin for Charles E. Cook for illegal banking at Juneau, Wisconsin, and this deponent was appointed agent to receive and convey said Charles E. Cook to this State; that said Cook was then at the city of Chicago, in the State of Illinois; that the governor of said State of Illinois upon the 5th day of July, 1890, made and issued an order for the arrest of said Cook, to be delivered to deponent as such agent, which said order was immediately delivered to the sheriff of Cook county, in the State of Illinois; that this deponent made diligent search for said Cook in said city of Chicago, but was unable to find him. Deponent learned that said Cook had been informed of said proceedings and had fled from the said city. Soon afterward deponent again visited said city of Chicago and made diligent search for said Cook, but was unable to find him. On or about the 23rd day of July, 1890, deponent again and for the third time visited said city of Chicago and searched for said Cook and learned that he had left the said city and gone to La Porte, in the State of Indiana; that deponent immediately went to the said last above-named place and learned that Cook had been there and had gone from there a short time before deponent arrived, and
96 deponent was unable to get any further trace of said Charles E. Cook, although he made diligent effort to find him; that all of deponent's acts in searching for said Charles E. Cook as aforesaid were done under the direction and by the order of P. G. Lewis, who was then and still is the district attorney for Dodge county, Wisconsin; and deponent further says that he knows that said Charles E. Cook was at said times and now is a fugitive from justice, and deponent further says that he makes this affidavit to be used upon an application for a requisition for said Charles E. Cook.

B. HAUSER.

Subscribed and sworn to before me this 5th day of March, A. D. 1891.

THEO. P. HEMMY,
Justice of the Peace.

STATE OF WISCONSIN, } ss:
County of Dodge, }

I, Theodore P. Hemmy, the justice of the peace before whom the foregoing affidavit was taken, being a justice of the peace in and for the said city of Juneau, in said county, hereby certify that I am well acquainted with Bernhard Hauser, the person who made said affidavit, and know that he is a person to be believed.

Witness my hand, at Juneau, in said county, this 5th day of March, A. D. 1891.

THEO. P. HEMMY,
Justice of the Peace.

97 STATE OF WISCONSIN, } ss:
County of Dodge, }

OFFICE OF CLERK OF CIRCUIT COURT.

I, Geo. W. Morse, clerk of the circuit court of the county of Dodge, in the State of Wisconsin, the said court being a court of record and having a seal, hereby certify that Theo. P. Hemmy, Esquire, whose name appears subscribed to the annexed instrument, was at the date thereof a justice of the peace of said county, duly elected and qualified and empowered by the laws of said State to administer oaths and take acknowledgements of deeds, and that to his acts and attestations as such full faith and credit are and ought to be given in the court and out. I further certify that I verily believe said signature purporting to be his is genuine, and that said instrument is executed and acknowledged according to the laws of said State.

In witness whereof I have hereunto set my hand and
[SEAL.] affixed the seal of said court, at Juneau, in said county and State, on said 6th day of March, A. D. 1891.

GEO. W. MORSE,
Clerk of Circuit Court as Aforesaid.

98 STATE OF WISCONSIN, } ss:
County of Dodge, }

John Kelley, being duly sworn, says that he is a resident of said county and has been for more than twenty years last past; that he knows Charles E. Cook and makes this affidavit to be used on an application for a requisition for him for illegal banking; that he believes said Charles E. Cook is now at the city of Chicago, in the State of Illinois; that on the 3rd day of March, 1891, he saw said Charles E. Cook at said city of Chicago; that at said time deponent had a conversation with said Charles E. Cook, and that said Charles E. Cook told deponent that he left the city of Chicago aforesaid in the month of July, 1890, and went to the city of Boston, Mass., and from there to Europe, and that the reason he did so was because the sheriff of Dodge county, Wisconsin, was after him to arrest him for illegal banking at Juneau, Wisconsin; and said Charles E. Cook further informed deponent that he, the said Cook, was insolvent, and that he did not have as much as two hundred and fifty dollars in the world, either in money or any other kind of property.

JOHN KELLEY.

Subscribed and sworn to before me this 5th day of March, A. D. 1891.

THEO. P. HEMMY,
Justice of the Peace.

99 STATE OF WISCONSIN, } ss:
County of Dodge, }

I, Theodore P. Hemmy, the justice of the peace before whom the foregoing affidavit was taken, being a justice of the peace in and

for the city of Juneau, in said county, hereby certify that I am well acquainted with John Kelley, the person who made said affidavit, and know that he is a person to be believed.

Witness my hand, at Juneau, in said county, this 5th day of March, A. D. 1891.

THEO. P. HEMMY,
Justice of the Peace.

STATE OF WISCONSIN, } ss:
County of Dodge, }

OFFICE OF CLERK OF CIRCUIT COURT.

I, Geo. W. Morse, clerk of the circuit court of the county of Dodge, in the State of Wisconsin, the said court being a court of record and having a seal, *go* hereby certify that Theo. P. Hemmy, Esquire, whose name appears subscribed to the annexed instrument, was at the date thereof a justice of the peace of said county, duly elected and qualified and empowered by the laws of said State to administer oaths and take acknowledgements of deeds, and that to his acts and attestations as such full faith and credit are and ought to be given in the court and out. I further certify that I verily believe said signature purporting to be his is genuine, and *and* said instrument is executed and acknowledged according to the laws of said State.

In witness whereof I have hereunto set my hand and affixed the [SEAL.] seal of said court, at Juneau, in said county and State, on said 5th day of March, A. D. 1891.

GEO. W. MORSE,
Clerk of Circuit Court as Aforesaid.

100 STATE OF WISCONSIN, } ss:
Dodge County, }

THE STATE OF WISCONSIN }
against }
CHARLES E. COOK. }

George W. Morse, being duly sworn, says that he is a resident of said county and has been for many years; that said Charles E. Cook and one Frank Leake did, on or about the seventh day of May, A. D. 1889, open an office or place of business at the city of Juneau, in said county of Dodge and State of Wisconsin, and called and styled such office or place of business the Bank of Juneau, and immediately entered upon and engaged in a general banking, brokerage, exchange, and deposit business, having a pretended capital of ten thousand dollars, and continued in such business, soliciting and receiving deposits and calling their institution a bank, up to and including the 20th day of June, A. D. 1890, when said bank closed its doors; that all of said banking business was done as aforesaid and all of said deposits received as aforesaid at the city of Juneau, in said county of Dodge and State of Wisconsin; that during all of said time said Charles E. Cook was the principal owner of said bank, he owning nine-tenths ($\frac{9}{10}$) of said bank and the said Frank Leake

owning one-tenth ($\frac{1}{10}$) thereof; that during all of said time said Charles E. Cook was an officer of said bank and had the general supervision of the business thereof, and all business of said bank was transacted by him personally or by his order and direction by one G. D. Richardson, who was acting as his agent; that from the 6th day of January, A. D. 1890, to and including the 20th day of June, 1890, at said city of Juneau, in said county of Dodge and State of Wisconsin, the said Charles E. Cook, by the inducements and pretenses held out by him and by said bank
101 of Juneau, received and accepted on deposit from cititzens of said county money, bills, notes, and other paper circulating as money, the property of said citizens of said county, to the amount and of the value of twenty-five thousand dollars; that said amount in money, bills, notes, and other paper circulating as money aforesaid was taken, received, and held on deposit in said bank of Juneau, at the said city of Juneau, in the said county of Dodge and State of Wisconsin, by said Charles E. Cook and Frank Leake by the express order and direction of said Charles E. Cook and with his full knowledge, and no part of said amount has ever been paid or returned to said depositors, but is now due them from said bank and the said owners thereof; that on the said 6th day of January, A. D. 1890, the said Charles E. Cook and the said Frank Leake were and each of them was and ever since has been insolvent, and that on said 6th day of January, A. D. 1890, the said Bank of Juneau was and ever since has been unsafe and insolvent, and that the said insolvency of said Charles E. Cook, Frank Leake, and the Bank of Juneau was well known to said Charles E. Cook on and ever since the said 6th day of January, A. D. 1890; that at the time the said deposits were received as aforesaid the said Charles E. Cook knew and had good reason to know that he, the said Charles E. Cook, the said Frank Leake, and the said Bank of Juneau were each and all of them unsafe and insolvent; that on the 20th day of June, A. D. 1890, at the said city of Juneau, in the said county of Dodge and State of Wisconsin, said Charles E. Cook, as such banker aforesaid, did accept and receive a deposit in said Bank of Juneau from one
102 Herman Becker, a resident of said county of Dodge, one hundred and seventy-five dollars in money, the property of said Herman Becker of the value of one hundred and seventy-five dollars, and the same has never been paid or returned to said Herman Becker or to any one for him, but is still due him from said Bank of Juneau and the owners thereof.

That at the time of receiving said deposit of one hundred and seventy-five dollars from said Herman Becker as aforesaid the said Charles E. Cook knew and had good reason to know that he, the said Charles E. Cook, the said Frank Leake, and the said Bank of Juneau were each and all of them unsafe and insolvent; that said deposit from said Herman Becker and all the other deposits hereinbefore mentioned were received by said Charles E. Cook with intent to cheat and defraud, contrary to the statute in such case made and provided and against the peace and dignity of the State of Wisconsin. Wherefore said George W. Morse prays that a warrant may

issue according to the statute in such case made and provided, and that the said Charles E. Cook may be arrested and dealt with according to law.

GEO. W. MORSE.

Subscribed and sworn to before me this 5th day of March, A. D. 1891.

THEO. P. HEMMY,
Justice of the Peace.

STATE OF WISCONSIN, } ss:
County of Dodge, }

I, Theodore P. Hemmy, a justice of the peace in and for
103 the city of Juneau, in the said county of Dodge and State of Wisconsin, hereby certify that the original complaint in the case of the State of Wisconsin against Charles E. Cook, of which the foregoing is a copy, was made before me as such justice of the peace on the 5th day of March, 1891, by George W. Morse, and the same is now on file in my office, in said city of Juneau, in said county of Dodge, and that I have the legal custody thereof. I further certify that I have compared the foregoing copy of said complaint with the said original instrument now on file in my office as aforesaid, and that the same is a true copy of said original.

Witness my hand, at Juneau aforesaid, this 5th day of March, A. D. 1891.

THEO. P. HEMMY,
Justice of the Peace.

STATE OF WISCONSIN, } ss:
County of Dodge, }

OFFICE OF CLERK OF CIRCUIT COURT.

I, Geo. W. Morse, clerk of the circuit court of the county of Dodge, in the State of Wisconsin, the said court being a court of record and having a seal, hereby certify that Theo. P. Hemmy, Esquire, whose name appears subscribed to the annexed instrument, was at the date thereof a justice of the peace of said county, duly elected and qualified and empowered by the laws of said State to administer oaths and take acknowledgments of deeds, and that to his acts and attestations as such full faith and credit are and ought to be given in the court and out. I further certify that I verily believe said
104 signature purporting to be his is genuine, and that said instrument is executed and acknowledged according to the laws of said State.

In witness whereof I have hereunto set my hand and affixed my
[SEAL.] seal of said court, at Juneau, in said county and State, on said 5th day of March, A. D. 1891.

GEO. W. MORSE,
Clerk of Circuit Court as Aforesaid.

STATE OF WISCONSIN, } ss.
County of Dodge. }

THE STATE OF WISCONSIN }
against
CHARLES E. COOK. }

The State of Wisconsin to the sheriff or any constable of said county:

Whereas George W. Morse, who is a resident of said county and has been for many years, has this day complained in writing to me on oath that said Charles E. Cook and one Frank Leake did, on or about the 7th day of May, A. D. 1889, open an office or place of business at the city of Juneau, in said county of Dodge and State of Wisconsin, and called and styled such office or place of business the Bank of Juneau, and immediately entered upon and engaged in a general banking, brokerage, exchange, and deposit business, having a pretended capital of ten thousand dollars, and con-
105 tinued in such business, soliciting and receiving deposits and calling their institution a bank, up to and including the 20th day of June, A. D. 1890, when said bank closed its doors; that all of said banking business was done as aforesaid and all of said deposits received as aforesaid at the city of Juneau, in said county of Dodge and State of Wisconsin; that during all of said time said Charles E. Cook was the principal owner of said bank, he owning nine-tenths ($\frac{9}{10}$) of said bank and the said Frank Leake owning one-tenth ($\frac{1}{10}$) thereof; that during all of said time said Charles E. Cook was an officer of said bank and had the general supervision of the business thereof, and all business of said bank was transacted by him personally or by his order and direction by one G. D. Richardson, who was acting as his agent; that from the 6th day of January, A. D. 1890, to and including the 20th day of June, A. D. 1890, at said city of Juneau, in said county of Dodge and State of Wisconsin, the said Charles E. Cook, by the inducements and pretenses held out by him and by said Bank of Juneau, received and accepted on deposit from citizens of said county money, bills, notes, and other property circulating as money, the property of said citizens of said county, to the amount and of the value of twenty-five thousand dollars; that said amount in money, bills, notes, and other paper circulating as money as aforesaid was taken, received, and held on deposit in said Bank of Juneau, at the said city of Juneau, in the said county of Dodge and State of Wisconsin, by said Charles E. Cook and Frank Leake by the express order and direction of the said Charles E. Cook and with his full knowledge, and no part of said amount has
106 ever been paid or returned to said depositors, but is now due them from said bank and the said owners thereof; that on said 6th day of January, A. D. 1890, the said Charles E. Cook and the said Frank Leake were and each of them was and ever since has been insolvent, and that on said 6th day of January, A. D. 1890, the said Bank of Juneau was and ever since had been unsafe and insolvent, and that the said insolvency of said Charles E. Cook, Frank Leake, and the Bank of Juneau was well known to said

Charles E. Cook on and ever since the said 6th day of January, A. D. 1890; that at the time *the time* the said deposits were received as aforesaid the said Charles E Cook knew and had good reasons to know that he, the said Charles E. Cook, the said Frank Leake, and the said Bank of Juneau were each and all of them unsafe and insolvent; that on the 20th day of June, A. D. 1890, at the said city of Juneau, in the said county of Dodge and State of Wisconsin, said Charles E. Cook, as such banker aforesaid, did accept and receive on deposit in said Bank of Juneau from one Herman Becker, a resident of said county of Dodge, one hundred and seventy-five dollars in money, the property of said Herman Becker of the value of one hundred and seventy-five dollars, and the same has never been paid or returned to said Herman Becker or to any one for him, but is still due him from said Bank of Juneau and the owners thereof; that at the time of receiving said deposit of one hundred and seventy-five dollars from said Herman Becker as aforesaid the said Charles E. Cook knew or had good reason to know that he, the said Charles E. Cook, the said Frank Leake, and the said Bank of Juneau were each and all of them unsafe and insolvent; that said deposit
107 from said Herman Becker and all the other deposits hereinbefore mentioned were received by said Charles E. Cook with intent to cheat and defraud, contrary to the statute in such — made and provided and against the peace and dignity of the State of Wisconsin, and prayed that the said Charles E. Cook might be arrested and dealt with according to law.

Now, therefore, you are commanded forthwith to apprehend the said Charles E. Cook and to bring him before me to be dealt with according to law.

Given under my hand, at Juneau, in said county, this 5th day of March, A. D. 1891.

THEO. P. HEMMY,
Justice of the Peace.

STATE OF WISCONSIN, } ss:
County of Dodge, }

I, Theodore P. Hemmy, justice of the peace in and for the city of Juneau, in said county of Dodge and State of Wisconsin, hereby certify that as justice of the peace aforesaid I did on the 5th day of March, A. D. 1891, issue the warrant in the case of the State of Wisconsin against Charles E. Cook, of which the foregoing is a copy, and that I now have the legal custody of said original warrant. I further certify that I have compared the said foregoing copy of said warrant with the said original warrant issued by me as aforesaid, and that the same is a true copy of said original.

Witness my hand, at Juneau aforesaid, this 5th day of March, A. D. 1891.

THEO. P. HEMMY,
Justice of the Peace.

108 STATE OF WISCONSIN, } ss:
County of Dodge, }

OFFICE OF CLERK OF CIRCUIT COURT.

I, Geo. W. Morse, clerk of the circuit court of the county of Dodge, in the State of Wisconsin, the said court being a court of record and having a seal, hereby certify that Theo. P. Hemmy, Esquire, whose name appears subscribed to the annexed instrument, was at the date thereof a justice of the peace of said county, duly elected and qualified and empowered by the laws of said State to administer oaths and take acknowledgments of deeds, and that to his acts and attestations as such full faith and credit are and ought to be given in the court and out. I further certify that I verily believe said signature purporting to be his is genuine, and that said instrument is executed and acknowledged according to the laws of said State.

In witness whereof I have hereunto set my hand and
[SEAL.] affixed the seal of said court, at Juneau, in said county and State, on said 6th day of March, A. D. 1891.

GEO. W. MORSE,
Clerk of Circuit Court as Aforesaid.

109 STATE OF ILLINOIS. EXECUTIVE DEPARTMENT.

Joseph W. Fifer, governor of Illinois, to any sheriff, coroner, or constable of any county in this State, Greeting:

The executive authority of the State of Wisconsin demands of me the apprehension and delivery of Charles E. Cook, represented to be a fugitive from justice, and has, moreover, produced and laid before me the copy of an affidavit made by and before a properly empowered officer in and of the said State, in accordance with the laws thereof, charging Charles E. Cook, the person so demanded, with having committed, against the laws of the said State of Wisconsin, the crime of illegal banking, which appears by the said copy of an affidavit, certified as authentic by the governor of the said State, now on file in the office of the secretary of State of Illinois.

Therefore, in compliance with the Constitution and the laws of the United States and of this State, in the name of the people of the State of Illinois, you are hereby commanded to arrest and secure the said fugitive, Charles E. Cook, if he be found within the limits of this State, and deliver him into the custody of Colden A. Hart, the agent of executive authority of the said State of Wisconsin appointed to receive the said fugitive:

Provided such agent shall appear within six months from
110 the time of the arrest, and the said agent is hereby empowered to transport the said fugitive, without hindrance or molestation of any sort or in any manner, to the extreme limits of this State, in furtherance of his authority, he paying all costs and fees for the arrest, detention, and delivery of the said fugitive.

And you may make due and formal return to this department of the time and manner in which this writ may be served.

In affirmation and testimony of all the foregoing I hereunto set my hand and cause to be affixed the great seal of State. Done at the city of Springfield this tenth day of March, in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the United States the one hundred and fifteenth.

[SEAL.] JOSEPH W. FIFER.

By the governor:

I. N. PEARSON,

Secretary of State.

111 That pursuant to such warrant and proceedings your petitioner was seized in said city of Chicago, State of Illinois, and turned over to the agent named therein, whereupon he applied to his honor Walter Q. Gresham, judge of the circuit court of the United States for the district of Illinois, sitting at Chicago, for a writ of *habeas corpus* and a writ to that end was duly issued in accordance with the prayer of said petitioner, but before the same could be served, and for the purpose of avoiding and preventing the service of said writ, your petitioner was forcibly put into a closed carriage and driven by circuitous routes through alleys and obscure streets to Evanston, twelve miles from the city of Chicago, and there put upon a train of cars where he was hurried to Wisconsin and placed in jail, and thereby the service of said writ of *habeas corpus* was prevented and by means of which your petitioner was carried to a foreign jurisdiction, remote from his friends and neighbors, and where he was without means of defense, all of which was done under and pursuant to the said alleged warrant and proceedings, and under and by virtue of which he is yet held and detained and not otherwise, which affidavits and preliminary examination on the charge therein contained are the same ones referred to as had before Theodore P. Hemmy, Esq., a justice of the peace of said county of Dodge, State of Wisconsin, in the return of the said Colden A. Hart made herein; that while held in custody under and by virtue of the warrant of extradition as aforesaid, and not otherwise, the said P. G. Lewis, Esq., the then acting district attorney of the county of Dodge, Wisconsin, filed the information referred to in said return

112 and your petitioner gave bail as in said return alleged.

And your petitioner is informed and believes and admits the fact to be that the said district attorney had caused to be presented to the grand jury of said county various charges against your petitioner other and different from the ones for which he was extradited prior to said extradition proceedings and your petitioner's arrest thereunder, but extradition was not demanded therefor and no copies or notice thereof was given the governor of the State of Illinois or your petitioner and no copies of any of said indictments accompanied said demand for surrender; and said grand jury had presented divers indictments against your petitioner, to which your petitioner, while so held in custody as aforesaid, has been compelled to and has appeared and been held to bail, copies of which said indictments Nos. 1 to 7, both inclusive, are filed herewith and made a part of this your petitioner's answer to the return made herein,

and to which said several indictments your petitioner has given bail and been surrendered by his bail as in said return stated and set forth.

And, further answering said return, your petitioner shows that he was at the time the said Herman Becker deposited in the Bank of Juneau the one hundred and seventy-five dollars mentioned in said proceedings for extradition, and at the time of the receipt of the said money of Herman Becker by the said Bank of Juneau, in the city of Chicago and State of Illinois, and not in the town of Juneau nor in said State of Wisconsin, and that your petitioner did not receive said deposit of Herman Becker at said date or at any other time unless the receipt thereof by one G. D. Richardson, on
113 June 20th, A. D. 1890, while this affiant — a citizen and resident of the State of Illinois as aforesaid and personally present in the city of Chicago, in said State, makes him guilty thereof and subject to extradition therefor, nor did your petitioner direct the receipt of said deposit or have any knowledge thereof until long afterwards; and your petitioner further shows to your honors that he has not been in the State of Wisconsin since he was so seized and extradited except in the custody of his bail or the said Colden A. Hart, under and by virtue of said proceedings, he admitting that at the instance and request of his bondsmen and to prevent the forfeiture of his said bail — surrendered to said Colden A. Hart, and not otherwise, since which surrender he has been continuously held in the custody of said sheriff for trial upon said several charges, in which custody he was at the date of the suing out of his original petition herein and now is; and your petitioner says that said imprisonment is illegal and in violation of the Constitution and laws of the United States in this, to wit:

First. That your petitioner is not legally charged with any crime in the State of Wisconsin.

Second. That your petitioner was not in the State of Wisconsin on the 20th day of June, A. D. 1890, at the time of the commission of said offense specified in said rendition proceedings, nor at any subsequent date, until he was seized and taken there as aforesaid, and was not at the time of said proceedings or any of them or of such seizure thereunder a fugitive from justice within the terms and meaning of the Constitution and laws of the United States.

Third. That said proceedings in the State of Wisconsin
114 prior to the issuance of the demand by the governor of said State were insufficient under the laws thereof then in force, the executive regulations governing such demand, to authorize the making thereof.

Fourth. That said proceedings and demand were insufficient under the laws of the State of Illinois then in force to authorize the issuance of said warrant and the rendition of your petitioner by the governor of the State of Illinois.

Fifth. That said proceedings were not instituted in good faith, but to extort a settlement of money demands against your petitioner, and to that end said affidavit charging that your petitioner was a fugitive from justice and had fled from Wisconsin was falsely and cor-

ruptly made, the said affiants, each and all of them, well knowing that your petitioner was not in said State of Wisconsin on the 20th day of June, A. D. 1890, at the time of the commission of said offense, nor at the time the deposit by Herman Becker of $175 referred to in said affidavits was made in said Bank of Juneau, nor at any other time near or at the time your petitioner became or was insolvent, and that said false charge was so corruptly and fraudulently made and your petitioner extradited thereunder by imposing on the governors of the States of Wisconsin and Illinois and your petitioner hurried from the State of his citizenship and domicile into a foreign State and imprisoned and held to bail, by means of which he insists that he was and is deprived of his liberty without due process of law, contrary to the Constitution of the United States, and is deprived of the rights guaranteed to him under the Constitution of the United States.

115 Sixth. That it is not competent for the authorities of the State of Wisconsin to procure from the governor of Illinois the surrender of your petitioner, and while holding him under and by virtue of such surrender as heretofore set out in this answer cause indictments to be found against you- petitioner for other alleged and different offenses, and require your petitioner to plead thereto, all of which was done in this case while the information alleging the offense for which your petitioner was extradited was yet pending and undetermined, and your petitioner had had no opportunity to plead thereto nor to return to the State of Illinois, your petitioner hereby insisting that it is his right and the right of every citizen extradited for an offense set forth or described in the extradition proceedings to be tried for that offense alone, and to be free from any other charges, informations, or indictments and arrest and trial thereunder until he has had an opportunity to return to the State from which he was so extradited.

Wherefore your petitioner prays that the return of the said Colden A. Hart, sheriff of Dodge county, State of Wisconsin, made herein may be adjudged wholly insufficient and held for naught, and that he be released and discharged by this honorable court from further imprisonment under and by virtue of any of said proceedings referred to in said warrant and in this his answer thereto.

And so your petitioner will ever pray.

CHARLES E. COOK.

ALDRICH, PAYNE & WASHBURN,
QUARLES, SPENCE, HOYT & QUARLES,
Att'ys for Petitioner.

116 STATE OF WISCONSIN, } ss:
County of Milwaukee, }

On this second day of March, A. D. 1892, personally came before me Charles E. Cook, known to me to be the petitioner in the above-entitled case for *habeas corpus* herein, and made oath to the forego-

ing answer subscribed by him, after the same had been carefully read by him, that the same was true in substance and in fact.

Witness my hand and seal this 5th day of March, A. D. 1892.

EDWARD KURTZ, *Clerk.*

117 At a term of the circuit court of Dodge county begun and held at the court-room of said court, in the city of Juneau, in said county, on the 10th day of February, in the year of our Lord one thousand eight hundred and ninety-one, and during said term, to wit, on the 9th day of April, A. D. 1891.

STATE OF WISCONSIN, } *ss:*
Dodge County, }

The jurors of the grand jury, good and lawful men of the county of Dodge, State of Wisconsin, duly summoned and then and there empaneled, chosen, selected, sworn, and charged to inquire for the State of Wisconsin in and for the body of the county of Dodge and State of Wisconsin aforesaid, upon their oaths do present—

That on the 18th day of June, A. D. 1890, at the city of Juneau, in the county of Dodge and State of Wisconsin, one Charles E. Cook, then and there being a banker and then and there doing a banking business and then and there doing business under the name and style of the Bank of Juneau, Chas. E. Cook & Co., bankers, seven hundred dollars, good and lawful money of the United States of America, of the value of seven hundred dollars of the personal goods, money, and property of one Hiram A. Jones then and there found and then and there deposited with him, the said Charles E. Cook, said banker then and there doing business as aforesaid, by him, the said Hiram A. Jones, he, the said
118 Charles E. Cook, said banker, then and there doing a banking business as aforesaid, did then and there feloniously and fraudulently take and convert to his, said Charles E. Cook's, own use, with intent then and there feloniously to steal, take, and carry away the same, whereby and by force of the statute in such case made and provided the said Charles E. Cook is deemed to have committed the crime of larceny, and so the jurors of the grand jury aforesaid upon their oaths as aforesaid do say that the said Charles E. Cook then and there in manner and form aforesaid the personal goods, money, and property of the said Hiram A. Jones of the value aforesaid, from the said Hiram A. Jones, unlawfully and feloniously did steal, take, and carry away, contrary to the statute and against the peace and dignity of the State of Wisconsin.

And the jurors of the grand jury aforesaid upon their oaths aforesaid do further present—

That Charles E. Cook, late of said county, of the 18th day of June, A. D. 1890, in said county of Dodge and State of Wisconsin aforesaid, then and there doing a banking business under the name and style of the Bank of Juneau, Chas. E. Cook & Co., bankers, corruptly, wilfully, fraudulently, and feloniously did then and there receive on deposit and for safe keeping from one Hiram A. Jones a

certain bank draft, bank check, and commercial paper drawn on the First N. B. of Chicago by the National Live Stock Bank of Chicago for seven hundred dollars in money of the personal goods, money, and property of the said Hiram A. Jones, then and there being found then and there of the value of seven hundred dollars, a bank draft, bank check, and commercial paper drawn on the First National Bank of Chicago by the National Live Stock Bank
119 of Chicago for the sum of seven hundred dollars, payable to the order of said H. A. Jones and duly endorsed by him, the said Hiram A. Jones, of the value of seven hundred dollars, did then and there feloniously and fraudulently take and convert to his, said Charles E. Cook's, own use, with intent feloniously to steal, take, and carry away the same, whereby and by force of the statute in such case made and provided the said Charles E. Cook is deemed to have committed the crime of larceny, and so the jurors of the grand jury aforesaid do say that the said Charles E. Cook then and there in manner and form aforesaid the personal goods, money, and property of the said Hiram A. Jones of the value aforesaid from the said Hiram A. Jones unlawfully and feloniously did steal, take, and carry away, contrary to the statute and against the peace and dignity of the State of Wisconsin.

And the jurors of the grand jury aforesaid upon their oaths aforesaid do further present—

That on the 18th day of June, A. D. 1890, at the city of Juneau, in the county of Dodge and State of Wisconsin, one Charles E. Cook was then and there a banker and then and there doing a banking, brokerage, and exchange business under the name and style of the Bank of Juneau, Chas. E. Cook & Co., bankers, and was then and there bailee, trustee, agent, clerk, employee, and servant of one Hiram A. Jones. He, the said Charles E. Cook, not being then and there an apprentice nor a person under the age of sixteen years, did then and there by virtue of his said business and employment, and whilst he was so engaged and employed in said banking business, have the care, custody, and possession and was then and there entrusted with the safe keeping, disbursement, and payment of a certain sum of money, to wit, of the sum of seven hundred dollars in money of the value of seven hundred dollars of the moneys of the said Hiram A. Jones, and the said money, the said sum of seven hundred dollars, he, the said Charles E. Cook, then and there
120 and whilst he was so engaged in said business and was employed as aforesaid, and while he, the said Charles E. Cook, by virtue of his business and employment, did have the care, custody, and possession of said money, and was entrusted with the safe keeping, disbursement, and payment of said money, trusted with safe keeping, disbursement, and payment of said money aforesaid, unlawfully, and feloniously did embezzle and fraudulently convert to his own use, without the consent of the said Hiram A. Jones, the owner thereof, and did then and there take, carry away, and secrete said sum, with intent then and there to convert said sum of seven hundred dollars to his own use, without the consent of the said Hiram A. Jones, the owner thereof, contrary to the statute in such

case made and provided and against the peace and dignity of the State of Wisconsin.

And the jurors of the grand jury aforesaid upon their oaths aforesaid do further present—

That one Charles E. Cook, then and there being a banker, then and there doing business under the name and style of the Bank of Juneau, Chas. E. Cook & Co., bankers, corruptly, wilfully, fraudulently, and feloniously did then and there receive on deposit from one Hiram A. Jones seven hundred dollars in money of the value of seven hundred dollars of the money and property of him, the said Hiram A. Jones; he, the said Hiram A. Jones, then and there not being indebted to the said Chas. E. Cook, banker as aforesaid, he, the said Charles E. Cook, banker as aforesaid, at the time he received said money on deposit, to wit, on the said 18th day of June, A. D. in the said year of our Lord one thousand eight hundred and ninety, was insolvent, and he, the said Charles E. Cook, then and there well knowing that he, the said Charles E. Cook, and the said Bank of Juneau, Chas. E. Cook & Co., bankers, were and each of them was then and there unsafe and insolvent, whereby and because of said insolvency the said money deposited as aforesaid
121 in the sum of seven hundred dollars and of the value of seven hundred dollars was lost to the said Hiram A. Jones, said depositor; and he, the said Charles E. Cook, not being then and there an apprentice nor under the age of sixteen years, and by virtue of his said business and employment, then and there had the custody, care, and possession of said sum of seven hundred dollars and was then and there entrusted with the safe keeping, disbursement, and payment of said sum of seven hundred dollars, then and there the property of said Hiram A. Jones as aforesaid, did then and there, and whilst he was so employed and in possession thereof, feloniously embezzle and fraudulently convert to his own use, and did then and there take, carry away, and secrete, with intent to convert to his own use the said sum of seven hundred dollars aforesaid, without the consent of him, said Hiram A. Jones, his said employer and the owner of said money.

And the jurors aforesaid upon their oaths aforesaid to say that the said Charles E. Cook then and there in manner and form aforesaid the said sum of seven hundred dollars in money of the money and property of said Hiram A. Jones in the sum aforesaid then and there did feloniously embezzle and fraudulently convert to his own use, and thereby committed the crime of embezzlement in the manner and form aforesaid, against the peace and dignity of the State of Wisconsin.

P. G. LEWIS,
District Attorney, Dodge Co., Wisconsin.

122 At a term of the circuit court of Dodge county, in the State of Wisconsin, begun and held at the court-room of said court, in the city of Juneau, in said county, on the 10th day of February, in the year of our Lord one thousand eight hundred and ninety-one, and during said term, to wit, on this 9th day of April, A. D. 1891.

STATE OF WISCONSIN, } ss:
Dodge County, }

The jurors of the grand jury, good and lawful men of the county of Dodge and State of Wisconsin, duly summoned and then and there empaneled, chosen, selected, sworn, and charged to inquire for the State of Wisconsin, in and for the body of the county of Dodge and State of Wisconsin aforesaid, upon their oaths do present—

That on the 19th day of June, A. D. 1890, at the city of Juneau, in the county of Dodge and State of Wisconsin, one Charles E. Cook, late of said county, *was* then and there a banker and an officer, director, manager, owner, proprietor, and agent of a certain banking, exchange, brokerage, and deposit institution in the city of Juneau, in the county of Dodge and State of Wisconsin aforesaid, and then and there engaged in the banking, brokerage, exchange, and deposit business under the name and style and known and called by the name of the Bank of Juneau, Chas. E. Cook & Co., bankers, did then and there unlawfully and feloniously accept and receive on deposit for safe keeping in the Bank of Juneau aforesaid, from one August F. Schoenwetter one thousand dollars in money of the value of one thousand dollars of the personal goods, money, and property of him, the said August F. Schwenwetter, then and there being, he, the said August F. Schwenwetter, not being then and there indebted to the said Bank of Juneau or to the said Charles E. Cook, banker aforesaid, and he, the said Charles E. Cook, at the time aforesaid when he took said money on deposit in his said Bank of Juneau well
123 knowing and then and there did know and had good reason to know that the said Bank of Juneau and he, the said Charles E. Cook, were then and there and each of them was then and there unsafe and insolvent, and said Bank of Juneau and he, the said Charles E. Cook, were and each of them was unsafe and insolvent in fact, whereby the deposit aforesaid, the sum of one thousand dollars in money, was lost to the said August F. Schoenwetter, the depositor aforesaid, and said sum of one thousand dollars, so deposited as aforesaid, was then and there feloniously and fraudulently converted to the use of him, the said Charles E. Cook, against the peace and dignity of the State of Wisconsin.

And the jurors of the grand jury aforesaid upon their oaths aforesaid do further present—

That on the 19th day of June, A. D. 1891, at the city of Juneau, in the county of Dodge, in the State of Wisconsin aforesaid, one Charles E. Cook was then and there a banker, then and there engaged in doing a banking, exchange, brokerage, and deposit business under the name and style of the Bank of Juneau, Chas. E. Cook & Co., bankers, in the city of Juneau and county and State aforesaid, and did then and there and while he, the said Charles E. Cook, was engaged in such banking, exchange, brokerage, and deposit business aforesaid, at the time and place aforesaid, unlawfully, feloniously, and fraudulently accept and receive on deposit and for safe keeping from one August F. Schoenwetter one thousand dollars in money, of the value of one thousand dollars of the personal

goods, money, and property of him, the said August F. Schoenwetter, then and there being, and the said sum of one thousand dollars in money was so as aforesaid received in the Bank of Juneau aforesaid on deposit by the said Charles E. Cook, and he, the said Charles E. Cook, then and there well knew and then and there had good reason to know that he, the said Charles E. Cook, doing business as such banker aforesaid under the name and style of the Bank of Juneau, Chas. E. Cook & Co., bankers, was then and there unsafe and insolvent, and the said Bank of Juneau was then and there unsafe and insolvent, and he, the said Charles E. Cook, was then
124 and there unsafe and insolvent in fact, and his said bank, known as the Bank of Juneau, Chas. E. Cook & Co., bankers, was then and there unsafe and insolvent in fact, against the peace and dignity of the State of Wisconsin.

G. P. LEWIS,
District Attorney for Dodge Co., Wis.

At a term of the circuit court of Dodge county, begun and held at the court-room, in the city of Juneau, in said county, on the 10th day of February, in the year of our Lord one thousand eight hundred and ninety-one, and during said term, to wit, on the 9th day of April, A. D. 1891.

STATE OF WISCONSIN, } *ss:*
Dodge County, }

The jurors of the grand jury, good and lawful men of the county of Dodge, State of Wisconsin, duly summoned and then and there empaneled, chosen, selected, sworn, and charged to inquire for the State of Wisconsin, in and for the body of the county of Dodge and State of Wisconsin aforesaid, upon their oaths do present—

That on the 19th day of June, A. D. 1890, at the city of Juneau, in the county of Dodge and State of Wisconsin, one Charles E. Cook then and there being a banker, and then and there doing a banking business and then and there doing business under the name and style of the Bank of Juneau, Chas. E. Cook & Co., bankers, one thousand dollars, good and lawful money of the United States of America, of the value of one thousand dollars, of the personal goods, money, and property of one August F. Schoenwetter then and there found and then and there deposited with him, the said Charles E. Cook, said banker then and there doing business as aforesaid, by him, the said August F. Schoenwetter, he, the said Charles E. Cook, said banker, then and there doing a banking business as
125 aforesaid, did then and there feloniously and fraudulently take and convert to his, said Charles E. Cook's own use, with intent then and there feloniously to steal, take, and carry away the same, whereby and by force of the statute in such case made and provided the said Charles E. Cook is deemed to have committed the crime of larceny, and so the jurors of the grand jury aforesaid upon their oaths as aforesaid do say that the said Charles E. Cook, then and there in manner and form aforesaid, the personal goods, money, and property of the said August F. Schoenwetter of the value afore-

said, from the said August F. Schoenwetter unlawfully and feloniously did steal, take, and carry away, contrary to the statute and against the peace and dignity of the State of Wisconsin.

And the jurors of the grand jury aforesaid upon their oaths aforesaid do further present—

That Charles E. Cook, late of said county, on the 19th day of June, A. D. 1890, in said county of Dodge and State of Wisconsin aforesaid, then and there doing a banking business under the name and style of the Bank of Juneau, Chas. E. Cook & Co., bankers, corruptly, willfully, fraudulently, and feloniously did then and there receive on deposit and for safe keeping from one August F. Schoenwetter one thousand dollars in money of the personal goods, money, and property of the said August F. Schoenwetter then and there being found then and there of the value of one thousand dollars, did then and there feloniously and fraudulently take and convert to his, said Charles E. Cook's, own use, with intent feloniously to steal, take, and carry away the same, whereby and by force of the statute in such case made and provided the said Charles E. Cook is deemed to have committed the crime of larceny, and so the jurors of the grand jury aforesaid do say that the said Charles E. Cook then and there in manner and form aforesaid the personal goods, money, and
126 property of the said August F. Schoenwetter of the value aforesaid from the said Aug. F. Schoenwetter, did unlawfully and feloniously steal, take, and carry away, contrary to the statute and against the peace and dignity of the State of Wisconsin.

And the jurors of the grand jury aforesaid upon their oaths aforesaid do further present—

That on the 19th day of June, A. D. 1890, at the city of Juneau, in the county of Dodge and State of Wisconsin, one Charles E. Cook was then and there a banker, and then and there doing a banking, brokerage, and exchange business under the name and style of the Bank of Juneau, Chas. E. Cook & Co., bankers, and was then and there bailee, trustee, agent, clerk, employé, and servant of one Aug. F. Schoenwetter. He, the said Charles E. Cook, not being then and there an apprentice nor a person under the age of sixteen years, did then and there by virtue of his said business and employment and whilst he was so engaged and employed in said banking business have the care, custody, and possession and was then and there entrusted with the safe keeping, disbursement, and payment of a certain sum of money, to wit, of the sum of one thousand dollars in money of the value of one thousand dollars of the moneys of the said Aug. F. Schoenwetter, and the said money, the said sum of one thousand dollars, he, the said Charles E. Cook, then and there and whilst he was so engaged in said business and was employed as aforesaid and while, he the said Charles E. Cook, by virtue of his business and employment, did have the care, custody, and possession of said money, and was entrusted with the safe keeping, disbursement, and payment of said money, trusted with safe keeping, disbursement, and payment of said money aforesaid, unlawfully and feloniously did embezzle and fraudulently convert to his own use without the consent of the said Aug. F. Schoenwetter, the owner thereof,

and did then and there take, carry away, and secrete said sum with intent then and there to convert said sum of one thousand dollars to his own use without the consent of the said August F.
127 Schoenwetter, the owner thereof, contrary to the statute in such case made and provided and against the peace and dignity of the State of Wisconsin.

And the jurors of the grand jury aforesaid upon their oaths aforesaid do further present—

That one Charles E. Cook, then and there being a banker, then and there doing business under the name and style of the Bank of Juneau, Chas. E. Cook & Co., bankers, corruptly, wilfully, fraudulently, and feloniously did then and there receive on deposit from one Aug. F. Schoenwetter one thousand dollars in money of the value of one thousand dollars of the money and property of him, the said August F. Schoenwetter, he, the said August F. Schoenwetter, then and there not being indebted to the said Charles E. Cook, banker as aforesaid. He, the said Charles E. Cook, banker as aforesaid, at the time he received said money on deposit, to wit, on the said 19th day of June, A. D. in the year of our Lord one thousand eight hundred and ninety, was insolvent, and he, the said Charles E. Cook, then and there well knowing that he, the said Charles E. Cook, and the said Bank of Juneau, Chas. E. Cook & Co., bankers, were and each of them was then and there unsafe and insolvent, whereby and because of said insolvency the said money deposited as aforesaid in the sum of one thousand dollars and of the value of one thousand dollars was lost to the said August F. Schoenwetter, said depositor, and he, the said Charles E. Cook, not being then and there an apprentice nor under the age of sixteen years, and by virtue of his said business and employment then and there had the custody, care, and possession of said sum of one thousand dollars, and was then and there entrusted with the safe keeping, disbursement, and payment of said sum of one thousand dollars, then and there the property of said August F. Schoenwetter as aforesaid, did then and there and whilst he was so employed and in possession thereof feloniously embezzle and fraudulently
128 convert to his own use and did then and there take, carry away, and secrete, with intent to convert to his own use, the said sum of one thousand dollars aforesaid without the consent of him, the said August F. Schoenwetter, his said employer and the owner of said money.

And the jurors aforesaid upon their oaths aforesaid do say that the said Charles E. Cook then and there in manner and form aforesaid the said sum of one thousand dollars in money and property of said Aug. F. Schoenwetter in the sum aforesaid then and there did feloniously embezzle and fraudulently convert to his own use, and thereby committed the crime of embezzlement in the manner and form aforesaid, against the peace and dignity of the State of Wisconsin.

P. G. LEWIS,
District Attorney, Dodge Co., Wisconsin.

At a term of the circuit court of Dodge county begun and held at the court-room of said court, in the city of Juneau, in said county, on the 10th day of February, A. D. 1891, in the year of our Lord one thousand eight hundred and ninety-one, and during said term, to wit, on this 9th day of April, A. D. 1891.

STATE OF WISCONSIN, } ss:
Dodge County, }

The jurors of the grand jury, good and lawful men of the county of Dodge, State of Wisconsin, duly summoned and then and there empaneled, chosen, selected, sworn, and charged to inquire for the State of Wisconsin, in and for the body of the county of Dodge and State of Wisconsin aforesaid, upon their oaths do present—

That on the 16th day of June, A. D. 1890, at the city of Juneau, in the county of Dodge and State of Wisconsin, one
129 Charles E. Cook, then and there being a banker and then and there doing a banking business and then and there doing business under the name and style of the Bank of Juneau, Chas. E. Cook & Co., bankers, one thousand dollars, good and lawful money of the United States of America, of the value of one thousand dollars of the personal goods, money, and property of one August F. Schoenwetter, then and there found and then and there deposited with him, the said Charles E. Cook, said banker then and there doing business as aforesaid, by him, the said August F. Schoenwetter, the said Charles E. Cook, said banker, then and there doing a banking business as aforesaid, did then and there feloniously and fraudulently take and convert to his, said Charles E. Cook's, own use, with intent feloniously to steal, take, and carry away the same, whereby and by force of the statute in such case made and provided the said Charles E. Cook is deemed to have committed the crime of larceny, and so the jurors of the grand jury aforesaid upon their oaths as aforesaid do say that the said Charles E. Cook then and there in manner and form aforesaid the personal goods, money, and property of the said August F. Schoenwetter of the value aforesaid from the said August F. Schoenwetter unlawfully and feloniously did steal, take, and carry away, contrary to the statute and against the peace and dignity of the State of Wisconsin.

And the jurors of the grand jury aforesaid upon their oaths aforesaid do further present—

That on the 16th day of June, A. D. 1890, at the city of Juneau, in the county of Dodge and State of Wisconsin, one Charles E. Cook, late of said county, was then and there a banker and then and there doing a banking, brokerage, and exchange business under the name and style of the Bank of Juneau, Chas. E. Cook & Co., bankers, and was then and there bailee, trustee, agent, clerk, employee, and servant of one August F. Schoenwetter.

He, the said Charles E. Cook, not being then and there an
130 apprentice nor a person under the age of sixteen years, did then and there by virtue of his said business and employment and whilst he was so engaged and employed in said banking

business have the care, custody, and possession and was then and there entrusted with the safe keeping, disbursement, and payment of a certain sum of money, to wit, of the sum — one thousand dollars in money of the value of one thousand dollars of the moneys of the said August F. Schoenwetter, and the said money, the sum of one thousand dollars, he, the said Charles E. Cook, then and there and whilst he was so engaged in said business and was employed as aforesaid, he, the said Charles E. Cook, by virtue of his business and employment, did have the care, custody, and possession of said money and was entrusted with the safe keeping, disbursement, and payment of said money aforesaid, unlawfully and feloniously did embezzle and fraudulently convert to his own use without the consent of the said August F. Schoenwetter, the owner thereof, and did then and there take, carry away, and secrete said sum of one thousand dollars with intent then and there to convert said sum of one thousand dollars to his own use without the consent of the said August F. Schoenwetter, the owner thereof, contrary to the statute in such case made and provided and against the peace and dignity of the State of Wisconsin.

And the jurors of the grand jury aforesaid upon their oaths aforesaid do further present—

That one Charles E. Cook, then and there being a banker, then and there doing business under the name and style of the Bank of Juneau, Chas. E. Cook & Co., bankers, corruptly, wilfully, fraudulently, and feloniously did then and there receive on deposit from one August F. Schoenwetter one thousand dollars in money of the value of one thousand dollars in money and property of him, the said August F. Schoenwetter, the said August F. Schoenwetter then and there not being indebted to the said Charles E. Cook, banker, as aforesaid. He, the said Charles E. Cook, banker aforesaid, at the time he received said money on deposit, to wit, on the said 16th day of June, in the year of our Lord one thousand eight hundred and ninety, was insolvent, and he, the said Charles E. Cook, then and there well knowing that he, the said Charles E. Cook, and the said Bank of Juneau, Chas. E. Cook & Co., bankers, were and each of them was then and there unsafe and insolvent, whereby and because of said insolvency the said money deposited, one thousand dollars, was lost to the said August F. Schoenwetter, said depositor, and he, the said Charles E. Cook, not being then and there an apprentice nor under the age of sixteen years, and by virtue of his said business and employment then and there had the custody, care, and possession of said sum of one thousand dollars, and was then and there entrusted with the safe keeping, disbursement, and payment of said sum of one thousand dollars, the property of said August F. Schoenwetter as aforesaid, did then and there and whilst he was so employed and in possession thereof feloniously embezzle and fraudulently convert to his own use and did then and there take, carry away, and secrete with intent to convert to his own use the said sum of one thousand dollars aforesaid without the consent of him, said August F. Schoenwetter, said employer and owner of said money.

131

And the jurors aforesaid upon their oaths aforesaid do say that the said Charles E. Cook then and there in manner and form aforesaid the said sum of one thousand dollars of the money and property of said Aug. F. Schoenwetter then and there did feloniously embezzle and fraudulently convert to his own use, and thereby committed the crime of embezzlement in the manner and form aforesaid, against the peace and dignity of the state of Wisconsin.

P. G. LEWIS,
District Attorney, Dodge Co., Wisconsin.

132 At a term of the circuit court of Dodge county, in the State of Wisconsin, begun and held at the court-room of said court, in the city of Juneau, in said county, on the 10th day of February, in the year of our Lord one thousand eight hundred and ninety-one, and during said term, to wit, on this 9th day of April, A. D. 1891:

STATE OF WISCONSIN, } ss:
Dodge County, }

The jurors of the grand jury, good and lawful men of the county of Dodge and State of Wisconsin, duly summoned and then and there empanneled, chosen, selected, sworn, and charged to enquire for the State of Wisconsin, in and for the body of the county of Dodge and State of Wisconsin aforesaid, upon their oath do present—

That on the 16th day of June, A. D. 1890, at the city of Juneau, in the county of Dodge and State of Wisconsin, one Charles E. Cook, late of said county, was then and there a banker and an officer, director, manager, owner, proprietor, and agent of a certain banking, exchange, brokerage, and deposit institution in the city of Juneau, in the county of Dodge and State of Wisconsin aforesaid, and then and there engaged in the banking, brokerage, exchange, and deposit business under the name and style and known and called by the name of the Bank of Juneau, Chas. E. Cook & Co., bankers, did then and there unlawfully and feloniously accept and receive on deposit for safe keeping in the Bank of Juneau aforesaid from one August F. Schoenwetter one thousand dollars in money of the value of one thousand dollars of the personal goods, money, and property of him, the said August F. Schoenwetter, then and there being, he, the said August F. Schoenwetter, not being then and there indebted to the said Bank of Juneau or to the said Charles E. Cook, banker aforesaid, and he, the said Charles E. Cook, at the time aforesaid, when he took said money on deposit in his
133 said Bank of Juneau, well knowing and then and there did know and had good reason to know that the said Bank of Juneau and he, the said Charles E. Cook, were then and there and each of them was then and there unsafe and insolvent, and said Bank of Juneau and he, the said Charles E. Cook, were and each of them was unsafe and insolvent in fact, whereby the deposit aforesaid, the sum of one thousand dollars in money, was lost to the said

Aug. F. Schoenwetter, the depositor aforesaid, and said sum of one thousand dollars so deposited as aforesaid was then and there feloniously and fraudulently converted to the use of him, the said Charles E. Cook, against the peace and dignity of the State of Wisconsin.

And the jurors of the grand jury aforesaid upon their oaths aforesaid do further present—

That on the 16th day of June, A. D. 1890, at the city of Juneau, in the county of Dodge, in the State of Wisconsin aforesaid, one Charles E. Cook was then and there a banker, then and there engaged in doing a banking, exchange, brokerage, and deposit business under the name and style of the Bank of Juneau, Chas. E. Cook & Co., bankers, in the city of Juneau and county and State aforesaid, and did then and there and while he, the said Charles E. Cook, was engaged in such banking, exchange, brokerage, and deposit business aforesaid, at the time and place aforesaid, unlawfully, feloniously, and fraudulently accept and receive on deposit and for safe keeping from one Aug. F. Schoenwetter one thousand dollars in money of the value of one thousand dollars of the personal goods, money, and property of him, the said August F. Schoenwetter, then and there being, and the said sum of one thousand dollars in money was so as aforesaid received in the Bank of Juneau aforesaid on deposit by the said Charles E. Cook, and he, the said Charles E. Cook, then and there well knew and then and there had

134 good reason to know that he, the said Charles E. Cook, doing business as such banker aforesaid under the name and style of the Bank of Juneau, Chas E. Cook & Co., bankers, was then and there unsafe and insolvent, and the said Bank of Juneau was then and there unsafe and insolvent, and he, the said Chas. E. Cook, was then and there unsafe and insolvent in fact, and his said bank, known as the Bank of Juneau, Chas. E. Cook & Co., bankers, was then and there unsafe and insolvent in fact, against the peace and dignity of the State of Wisconsin.

P. G. LEWIS,
District Attorney, Dodge Co., Wis.

135 At a term of the circuit court of Dodge county, in the State of Wisconsin, begun and held at the court-room of said court, in the city of Juneau, in said county, on the 10th day of February, in the year of our Lord one thousand eight hundred and ninety-one, and during said term, to wit, on this 9th day of April, A. D. 1891.

STATE OF WISCONSIN, } *ss*:
Dodge County, }

The jurors of the grand jury, good and lawful men of the county of Dodge and State of Wisconsin, duly summoned and then and there empaneled, chosen, selected, sworn, and charged to inquire for the State of Wisconsin, in and for the body of the county of Dodge and State of Wisconsin aforesaid, upon their oaths do present—

That on the 18th day of June, A. D. 1890, at the city of Juneau, in the county of Dodge and State of Wisconsin, one Charles E. Cook, late of said county, was then and there a banker and an officer, director, manager, owner, proprietor, and agent of a certain banking, exchange, brokerage, and deposit institution in the city of Juneau, in the county of Dodge and State of Wisconsin aforesaid, and then and there engaged in the banking, brokerage, exchange, and deposit business under the name and style and known and called by the name of the Bank of Juneau, Chas. E. Cook & Co., bankers, did then and there unlawfully and feloniously accept and receive on deposit for safe keeping in the Bank of Juneau aforesaid from one Hiram A. Jones seven hundred dollars in money of the value of seven hundred dollars of the personal goods, money, and property of him, the said Hiram A. Jones, then and there being, he, the said Hiram A. Jones, not being then and there indebted to the said Bank of Juneau or to the said Charles E. Cook, banker aforesaid, and he, the said Charles E. Cook, at the time aforesaid when he took said money on deposit in his said Bank of Juneau, well knowing
136 and then and there did know and had good reason to know that the said Bank of Juneau and he, the said Charles E. Cook, were then and there and each of them was then and there unsafe and insolvent, and said Bank of Juneau and he, the said Charles E. Cook, were and each of them was unsafe and insolvent in fact, whereby the deposit aforesaid, the sum of seven hundred dollars in money, was lost to the said Hiram A. Jones, the depositor aforesaid, and said sum of seven hundred dollars so deposited as aforesaid was then and there feloniously and fraudulently converted to the use of him, the said Charles E. Cook, against the peace and dignity of the State of Wisconsin.

And the jurors of the grand jury aforesaid upon their oaths aforesaid do further present—

That on the 18th day of June, A. D. 1891, at the city of Juneau, in the county of Dodge, in the State of Wisconsin aforesaid, one Charles E. Cook was then and there a banker, then and there engaged in doing a banking, exchange, brokerage, and deposit business under the name and style of the Bank of Juneau, Chas. E. Cook & Co., bankers, in the city of Juneau and county and State aforesaid, and did then and there and while he, the said Charles E. Cook, was engaged in such banking, exchange, brokerage, and deposit business aforesaid at the time and place aforesaid unlawfully, feloniously, and fraudulently accept and receive on deposit and for safe keeping from one Hiram A. Jones seven hundred dollars in money of the value of seven hundred dollars of the personal goods, money, and property of him, the said Hiram A. Jones, then and there being, and the said sum of seven hundred dollars in money was so as aforesaid received in the Bank of Juneau aforesaid on deposit by the said Charles E. Cook, and he, the said Charles E. Cook, then and there well knew and then and there had good reason
137 to know that he, the said Charles E. Cook, doing business as such banker aforesaid under the name and style of the Bank of Juneau, Chas. E. Cook & Co., bankers, was then and there unsafe

and insolvent, and the said bank of Juneau was then and there unsafe and insolvent, and he, the said Chas. E. Cook, was then and there unsafe and insolvent in fact, and his said bank, known as the Bank of Juneau, Chas. E. Cook & Co., bankers, was then and there unsafe and insolvent in fact, against the peace and dignity of the State of Wisconsin.

And the jurors of the grand jury aforesaid upon their oaths do further present—

That on the 18th day of June, A. D. 1890, at the city of Juneau, in the county of Dodge, State of Wisconsin aforesaid, one Charles E. Cook was then and there a banker, then and there engaged in doing a banking, exchange, brokerage, and deposit business under the name and style of the Bank of Juneau, Chas. E. Cook & Co., bankers, in the city of Juneau, and county and State aforesaid, and did then and there and while he, the said Charles E. Cook, was engaged in such banking, exchange, brokerage, and deposit business aforesaid at the time and place aforesaid unlawfully, feloniously, and fraudulently accept and receive on deposit for collection and safe keeping from one Hiram A. Jones a draft, bill of exchange, bank check, drawn by the National Live Stock Bank of Chicago upon the First National Bank of Chicago for the sum of seven hundred dollars, payable to the order of him, the said Hiram A. Jones, and duly endorsed by him, the said Hiram A. Jones, and by him, the said Hiram A. Jones, then and there so endorsed as aforesaid and deposited with the said Charles E. Cook in his said bank of Juneau for collection and for safe keeping for the account and to the credit of him, the said Hiram A. Jones, which said draft, bill of exchange, and bank check was then and there of the value of seven hundred dollars of the personal goods, money, and property
138 of him, the said Hiram A. Jones, then and there being; he, the said Charles E. Cook, at the time when he took said draft, bill of exchange, bank check, and commercial paper aforesaid on deposit and for safe keeping and collection, well knowing and then and there did know and had good reason to know that he, the said Charles E. Cook, and his said Bank of Juneau were then and there and each of them was then and there unsafe and insolvent, and he, the said Charles E. Cook, and the Bank of Juneau, Chas. E. Cook & Co., bankers aforesaid, were and each of them was then and there unsafe and insolvent in fact, contrary to the statute and against the peace and dignity of the State of Wisconsin.

P. G. LEWIS,
District Attorney, Dodge Co., Wis.

139 At a term of the circuit court of Dodge county, in the State of Wisconsin, begun and held at the court-room of said court, in the city of Juneau, in said county, on the 10th day of February, in the year of our Lord one thousand eight hundred and ninety-one, and during said term, to wit, on this 9th day of April, A. D. 1891.

STATE OF WISCONSIN, } ss:
Dodge County, }

The jurors of the grand jury, good and lawful men of the county of Dodge and State of Wisconsin, duly summoned and then and there empaneled, chosen, selected, sworn, and charged to inquire for the State of Wisconsin, in and for the body of the county of Dodge and State of Wisconsin aforesaid, upon their oaths do present—

That on the 3rd day of June, A. D. 1890, at the city of Juneau, in the county of Dodge and State of Wisconsin, one Charles E. Cook, late of said county, was then and there a banker and an officer, director, manager, owner, proprietor, and agent of a certain banking, exchange, brokerage, and deposit institution in the city of Juneau, in the county of Dodge and State of Wisconsin aforesaid, and then and there engaged in the banking, brokerage, exchange, and deposit business under the name and style and known and called by the name of the Bank of Juneau, Chas. E. Cook & Co., bankers, did then and there unlawfully and feloniously accept and receive on deposit for safe keeping in the Bank of Juneau aforesaid from one August F. Schoenwetter one thousand and one hundred dollars in money of the value of one thousand and one hundred dollars of the personal goods, money, and property of him, the said August F. Schoenwetter, then and there being, he, the said August F. Schoenwetter, not being then and there indebted to the said Bank of Juneau or to the said Charles E. Cook, banker aforesaid, and he, the said Charles E. Cook, at the time aforesaid when he took said money on deposit in his said Bank of Juneau, well know-
140 ing and then and there did know and had good reason to know that the said Bank of Juneau and he, the said Charles E. Cook, were then and there and each of them was then and there unsafe and insolvent; and said Bank of Juneau and he, the said Charles E. Cook, were and each of them was unsafe and insolvent in fact, whereby the deposit aforesaid, the sum of one thousand one hundred dollars in money, was lost to the said August F. Schoenwetter, the depositor aforesaid, and said sum of one thousand and one hundred dollars so deposited as aforesaid was then and there feloniously and fraudulently converted to the use of him, the said Charles E. Cook, against the peace and dignity of the State of Wisconsin.

And the jurors of the grand jury aforesaid upon their oaths aforesaid do further present—

That on the 3rd day of June, A. D. 1890, at the city of Juneau, in the county of Dodge, in the State of Wisconsin aforesaid, one Charles E. Cook was then and there a banker, then and there engaged in doing a banking, exchange, brokerage, and deposit business under the name and style of the Bank of Juneau, Chas. E. Cook & Co., bankers, in the city of Juneau and county and State aforesaid, and did then and there and while he, the said Charles E. Cook, was engaged in such banking, exchange, brokerage, and deposit business aforesaid at the time and place aforesaid unlawfully, feloniously, and fraudulently accept and receive on deposit and for safe keeping

from one Aug. F. Schoenwetter one thousand and one hundred dollars in money of the value of one thousand and one hundred dollars of the personal goods, money, and property of him, the said August F. Schoenwetter, then and there being, and the said sum of one thousand and one hundred dollars in money was so as aforesaid received in the Bank of Juneau aforesaid on deposit by the said Charles E. Cook, and he, the said Charles E. Cook, then and there well knew and then and there had good reason to know that
141 he, the said Charles E. Cook, doing business as such banker aforesaid under the name and style of the Bank of Juneau, Chas. E. Cook & Co., bankers, was then and there unsafe and insolvent, and the said Bank of Juneau was then and there unsafe and insolvent, and he, the said Chas. E. Cook, was then and there unsafe and insolvent in fact, and his said bank, known as the Bank of Juneau, Chas. E. Cook & Co., bankers, was then and there unsafe and insolvent in fact, against the peace and dignity of the State of Wisconsin.

P. G. LEWIS,
District Attorney, Dodge Co., Wis.

142 March 5, 1892.—Replication of the respondent to the traverse of the petitioner to his return filed, as follows:

United States Circuit Court, Eastern District of Wisconsin.

In Re CHAS. E. COOK.

Habeas Corpus.

And now comes the respondent, Colden A. Hart, sheriff of Dodge county, Wisconsin, appearing by W. C. Williams and P. G. Lewis, district attorney of Dodge county, Wis., his counsel herein, and, for replication to the traverse of the return to the said writ of *habeas corpus* herein, denies that the said banking business referred to in said traverse and carried on under the name of the Bank of Juneau was at any time managed largely by the resident partner, Frank Leake, if the said Frank Leake was a partner at all in said banking business at Juneau, and denies that said business was in any respect or to any extent under the management or direction or control of the said Frank Leake, and denies that he ever at any time exercised any control or supervision over said bank or the management of said business in any way whatever, but avers, on the contrary, that all of said banking business was under the personal direction, control, and supervision of the said Charles E. Cook and no other person, and that all clerks or employees of said Bank of Juneau were hired by and worked for and under the immediate personal direction, supervision, and control of said Cook & no other person, and were subject to instructions from him alone, and said Cook was regularly in attendance at Juneau in person every two or three weeks during the existence of said bank to personally give all directions concerning the same, and no other person had or exercised any au-

thority or control over any of the affairs of said bank besides said Charles E. Cook.

That said Charles E. Cook is not now imprisoned by this respondent under color of the authority of the Constitution and laws of the United States relating to the return of fugitives from justice
143 to the State or Territory from which they fled, nor at any time since the 6th day of June, 1891, has said Cook been held or detained under or by virtue of any such process, but upon the processes & warrants duly issued & served upon him in this State and not elsewhere, as set forth in the return to said writ.

Respondent admits the procuring, issuance, delivery of the requisition of the governor of Wisconsin upon the governor of Illinois upon the papers and documents set forth in said traverse, if the same be true and correct copies, of which respondent has no knowledge nor the means of ascertaining, and admits the issuance of the warrant of the governor of Illinois to the sheriff of Cook county, therein set forth, but denies that he was turned over to respondent and hurried away without sufficient and proper opportunity for taking any and all legal proceedings to test the validity of any and all proceedings for his return to Wisconsin, but, on the contrary, that said Charles E. Cook was arrested by the sheriff of Cook county on the 11th day of March, 1891, at Chicago, Illinois, under said warrant of the governor of Illinois and not turned over to the agent of Wisconsin, but was offorded every opportunity to take any and all steps for testing the right to remove him in any court, and on the same day said Cook did employ and consult with counsel and sue out a writ of *habeas corpus* in the circuit court of Cook county, Illinois, before the Hon. Frank Baker, judge thereof, for that express purpose and caused the same to be served upon the sheriff of Cook county while said Cook was yet in his custody under such warrant and said *habeas corpus* matter was pending in said court from time to time until a full trial, hearing, and determination of the issues therein was had & a final decision rendered, after hearing all the evidence offered on both sides and after full and exhaustive arguments of counsel respectively, on the 6th day of June, 1891, and an order discharging said writ of *habeas corpus* and remanding said Cook to the
144 custody of said sheriff of Cook county under said warrant, to be delivered to the agent of the State of Wisconsin to be disposed of as commanded. A duly certified and exemplified copy of the record of said proceedings and final judgment of said court is hereto attached and made part of this replication; and not until the 6th day of June, 1891, after such prolonged hearing, trial, and final judgment of said court, did the agent of the State of Wisconsin have or exercise any control or detention of said Cook.

And for a further replication to said traverse to said return your respondent shows and alleges said Charles E. Cook was in the State of Wisconsin and in the county of Dodge on the same day the crime charged in the complaint and affidavits upon which said requisition was granted, to wit, the 20th day of June, 1890, and had been in said State for one or more days prior thereto and was a fugitive from justice from the State of Wisconsin for many months prior to the

issuance and service of said warrant of the governor of Illinois, whom it was impossible for the agent of said State to find; and, protesting the inefficiency of the matters alleged in said traverse to invalidate the proceedings and processes of the said circuit court of Dodge county, under which said Cook is held, as set forth in the return herein, respondent demands judgment discharging said writ of *habeas corpus* and the said Charles E. Cook may be remanded to the custody of respondent, to be dealt with according to law, and this respondent have any other or further order or relief in the premises as may be just and according to law.

COLDEN A. HART.

Subscribed and sworn to before me this 5th day of March, 1892.
EDW. KURTZ, *Clerk.*

145 PEOPLE STATE OF ILLINOIS *ex Rel.* C. E. COOK
vs.
JAMES H. GILBERT *et al.* } 89625.

UNITED STATES OF AMERICA.

STATE OF ILLINOIS, }
Cook County, } *ss:*

Pleas before the Honorable Frank Baker, one of the judges of the circuit court of Cook county, at a term thereof begun and held at Chicago, in said county and State, on the third Monday (being the 18th day) of May, in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the United States the one hundred and fifteenth.

Present: Honorable Frank Baker, one of the judges of the circuit court of Cook county, State of Illinois; J. M. Longenecker, State's attorney; James H. Gilbert, sheriff.
Attest: HENRY BEST, *Clerk.*

Be it remembered that heretofore, to wit, on the 11th day of March, A. D. 1891, there was filed in said court a certain petition for *habeas corpus*, and thereupon there issued out of said court and under the seal thereof the people's writ of *habeas corpus*, directed to the coroner of Cook county to execute; which said petition and said writ are in the words and figures following, to wit:

STATE OF ILLINOIS, EXECUTIVE DEPARTMENT.

Joseph W. Fifer, governor of Illinois, to any sheriff, coroner, or constable of any county in this State, Greeting:

146 The executive authority of the State of Wisconsin demands of me the apprehension and delivery of Charles E. Cook, represented to be a fugitive from justice, and has, moreover, produced and laid before me the copy of an affidavit made by and before a properly empowered officer in and of the State, in accordance with the laws thereof, charging Charles E. Cook, the person so demanded,

thority or control over any of the affairs of said bank besides said Charles E. Cook.

That said Charles E. Cook is not now imprisoned by this respondent under color of the authority of the Constitution and laws of the United States relating to the return of fugitives from justice
143 to the State or Territory from which they fled, nor at any time since the 6th day of June, 1891, has said Cook been held or detained under or by virtue of any such process, but upon the processes & warrants duly issued & served upon him in this State and not elsewhere, as set forth in the return to said writ.

Respondent admits the procuring, issuance, delivery of the requisition of the governor of Wisconsin upon the governor of Illinois upon the papers and documents set forth in said traverse, if the same be true and correct copies, of which respondent has no knowledge nor the means of ascertaining, and admits the issuance of the warrant of the governor of Illinois to the sheriff of Cook county, therein set forth, but denies that he was turned over to respondent and hurried away without sufficient and proper opportunity for taking any and all legal proceedings to test the validity of any and all proceedings for his return to Wisconsin, but, on the contrary, that said Charles E. Cook was arrested by the sheriff of Cook county on the 11th day of March, 1891, at Chicago, Illinois, under said warrant of the governor of Illinois and not turned over to the agent of Wisconsin, but was offorded every opportunity to take any and all steps for testing the right to remove him in any court, and on the same day said Cook did employ and consult with counsel and sue out a writ of *habeas corpus* in the circuit court of Cook county, Illinois, before the Hon. Frank Baker, judge thereof, for that express purpose and caused the same to be served upon the sheriff of Cook county while said Cook was yet in his custody under such warrant and said *habeas corpus* matter was pending in said court from time to time until a full trial, hearing, and determination of the issues therein was had & a final decision rendered, after hearing all the evidence offered on both sides and after full and exhaustive arguments of counsel respectively, on the 6th day of June, 1891, and an order discharging said writ of *habeas corpus* and remanding said Cook to the
144 custody of said sheriff of Cook county under said warrant, to be delivered to the agent of the State of Wisconsin to be disposed of as commanded. A duly certified and exemplified copy of the record of said proceedings and final judgment of said court is hereto attached and made part of this replication; and not until the 6th day of June, 1891, after such prolonged hearing, trial, and final judgment of said court, did the agent of the State of Wisconsin have or exercise any control or detention of said Cook.

And for a further replication to said traverse to said return your respondent shows and alleges said Charles E. Cook was in the State of Wisconsin and in the county of Dodge on the same day the crime charged in the complaint and affidavits upon which said requisition was granted, to wit, the 20th day of June, 1890, and had been in said State for one or more days prior thereto and was a fugitive from justice from the State of Wisconsin for many months prior to the

issuance and service of said warrant of the governor of Illinois, whom it was impossible for the agent of said State to find; and, protesting the inefficiency of the matters alleged in said traverse to invalidate the proceedings and processes of the said circuit court of Dodge county, under which said Cook is held, as set forth in the return herein, respondent demands judgment discharging said writ of *habeas corpus* and the said Charles E. Cook may be remanded to the custody of respondent, to be dealt with according to law, and this respondent have any other or further order or relief in the premises as may be just and according to law.

COLDEN A. HART.

Subscribed and sworn to before me this 5th day of March, 1892.
EDW. KURTZ, *Clerk.*

145 PEOPLE STATE OF ILLINOIS *ex Rel.* C. E. COOK
vs.
JAMES H. GILBERT *et al.* } 89625.

UNITED STATES OF AMERICA.

STATE OF ILLINOIS, } *ss:*
Cook County, }

Pleas before the Honorable Frank Baker, one of the judges of the circuit court of Cook county, at a term thereof begun and held at Chicago, in said county and State, on the third Monday (being the 18th day) of May, in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the United States the one hundred and fifteenth.

Present: Honorable Frank Baker, one of the judges of the circuit court of Cook county, State of Illinois; J. M. Longenecker, State's attorney; James H. Gilbert, sheriff.
Attest: HENRY BEST, *Clerk.*

Be it remembered that heretofore, to wit, on the 11th day of March, A. D. 1891, there was filed in said court a certain petition for *habeas corpus*, and thereupon there issued out of said court and under the seal thereof the people's writ of *habeas corpus*, directed to the coroner of Cook county to execute; which said petition and said writ are in the words and figures following, to wit:

STATE OF ILLINOIS, EXECUTIVE DEPARTMENT.

Joseph W. Fifer, governor of Illinois, to any sheriff, coroner, or constable of any county in this State, Greeting:

146 The executive authority of the State of Wisconsin demands of me the apprehension and delivery of Charles E. Cook, represented to be a fugitive from justice, and has, moreover, produced and laid before me the copy of an affidavit made by and before a properly empowered officer in and of the State, in accordance with the laws thereof, charging Charles E. Cook, the person so demanded,

with having committed against the laws of the said State of Wisconsin the crime of illegal banking, which appears by the said copy of an affidavit certified as authentic by the governor of the said State, now on file in the office of the secretary of state of Illinois; therefore in compliance with the Constitution and the laws of the United States and of this State, in the name of the people of the State of Illinois you are hereby commanded to arrest and secure the said fugitive, Charles E. Cook, if he be found within the limits of this State and deliver him into the custody of Colden A. Hart, the agent of executive authority of the said State of Wisconsin appointed to receive the said fugitive.

Provided such agent shall appear within six months from the time of the arrest, and the said agent is hereby empowered to transport the said fugitive without hindrance or molestation of any sort or in any manner to the extreme limits of this State in furtherance of his authority, he paying all costs and fees of arrest, detention, and delivery of said fugitive; and you make due and formal return to this department of the time and manner in which this writ may be served.

In affirmation and testimony of all the foregoing I hereunto set my hand and cause to be affixed the great seal of State.

Done at the city of Springfield this tenth day of March, in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the United States the one hundred and fifteenth.

JOSEPH W. FIFER.

By the governor:
[SEAL.] I. N. PEARSON,
Secretary of State.

147 STATE OF ILLINOIS, } *ss:*
Cook County. }

PEOPLE OF THE STATE OF ILLINOIS upon the Relation of CHARLES E. COOK
vs.
JAMES H. GILBERT, Sheriff; EDMUND E. LEE, Deputy Sheriff.
} Petition for *Habeas Corpus.*

To the Honorable Frank Baker, judge of said court:

Your petitioner, Charles E. Cook, of Chicago, in the county of Cook, State of Illinois, complaining, shows that he is detained and imprisoned and restrained of his liberty by James H. Gilbert, sheriff, and by Edmund E. Lee, deputy sheriff, of said county on a charge of being a fugitive from justice from the State of Wisconsin by virtue of a certain pretended warrant for the extradition of your petitioner, a copy whereof is hereto annexed, which detention and imprisonment of your petitioner is unjust and contrary to law.

And your petitioner further shows that the evidence upon which his said commitment was based was in substance as follows—that is to say, a copy of a certain pretended affidavit charging that your

petitioner was and is guilty of illegal banking in the State of Wisconsin.

That your petitioner is not guilty of said alleged offence, and your petitioner charges that said pretended warrant is unauthorized, contrary to law, and void.

That your petitioner is and for the five years last past has been a citizen of the State of Illinois and a resident of said city of Chicago, in said county of Cook, and that at the time of the alleged commission of said alleged offence he was not nor was he at the time of the making of said alleged affidavit or at any time since that time in the State of Wisconsin.

That there is no evidence that the petitioner ever accepted or received on deposit or for safe keeping or to loan from any
148 person any money or any bills, notes, or other paper circulating as money, or any notes, drafts, bills of exchange, bank checks, or other commercial paper for safe keeping or for collection when he knew or had good reason to know that the bank, company, or corporation receiving the same or that petitioner was unsafe or insolvent.

And your petitioner further shows that he is not committed or detained by virtue of any process, judgment, decree, or execution issued by any court or judge of the United States in a case where such court or judge has exclusive jurisdiction, nor by virtue of a final judgment or decree of any competent court of civil or criminal jurisdiction or of any execution issued upon such judgment or decree, nor for any treason, felony, or other crime committed in any other State or Territory of the United States for which he ought, by the Constitution and laws of the United States, to be delivered up to the executive power of such State or Territory.

To be relieved from which said detention and imprisonment your petitioner now applies, praying that a suit of *habeas corpus*, to be directed to the said James H. Gilbert, sheriff, and Edmund E. Lee, deputy sheriff, and Colden A. Hart, in said warrant named, may issue in this behalf pursuant to the statute in such case made and provided, so that your petitioner may be forthwith brought before this honorable court to do, submit to, and receive what the law may require.

CHARLES E. COOK.

D. J. SCHUYLER &
JOHN S. MILLER,
Attorneys for Relator.

STATE OF ILLINOIS, } *ss:*
Cook County, }

Charles E. Cook, the petitioner above named, being first duly sworn, on oath says that he has heard read the foregoing pe-
149 tition by him subscribed and knows the contents thereof, and that the same is true of his own knowledge except as to the matters and things therein stated to be upon information and belief, and as to those matters he believes it to be true.

CHARLES E. COOK.

Subscribed and sworn to by the said Charles E. Cook this 11th day of March, A. D. 1891, before me—

[SEAL.] WILLIAM H. WEBBER,
Notary Public.

STATE OF ILLINOIS, } ss :
Cook County, }

Let a writ of *habeas corpus* as prayed for within, returnable before me at my court-room, No. 314 County building, — instanter.

FRANK BAKER,
Judge of the Circuit Court.

STATE OF ILLINOIS, } ss :
County of Cook, }

The People of the State of Illinois to James H. Gilbert, Edmund E. Lee, & Colden A. Hart, etc., Greeting:

We command you that you do forthwith, without excuse or delay, bring or cause to be brought before our circuit court of Cook county, now in session at the court-house, in Chicago, in said county, the body of Charles E. Cook, by whatever name or addition he is known or called, and who is unlawfully detained in your custody (as it is represented unto Hon. Frank Baker, one of the judges of said court, by the petition of Charles E. Cook), together with the day and cause of caption and detention; then and there to perform and abide such order and directions as our said circuit court of Cook county shall make in that behalf.

Hereof make due return forthwith, under penalty, of what the law directs.

Witness Henry Best, clerk of our said circuit court of Cook county, and the seal thereof, at Chicago, in said county and
150 State, this 11th day of March, A. D. 1891.

[SEAL.] HENRY BEST, *Clerk.*

To the coroner of said county to deliver.

And thereupon, on the same day, to wit, the 11th day of March, A. D. 1891, the following, among other, proceedings were had and entered of record in said court, to wit:

Order March 11, '91.

THE PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* CHARLES E. COOK *vs.* JAMES H. GILBERT, Sheriff, and EDWARD E. LEE, Deputy Sheriff.	89625. 10399.	Petition.

This day appeared in open court Charles E. Cook, as principal, and Margaret Roche and Lizzie Cook, as sureties, and jointly and severally acknowledge themselves to owe and to be indebted unto the people of the State of Illinois in the penal sum of fifteen hun-

dred dollars, to be levied of their respective goods and chattels, land and tenements respectively, if default be made in the premises and conditions following, to wit:

Now, the condition of the above obligation is such that if the above-bounden Charles E. Cook shall personally be and appear before the circuit court of Cook county, in the branch thereof presided over by his honor Judge Frank Baker, on March 13th, 1891, and from day to day thereafter until discharged by order of said court, and not depart the same without leave, then this recognizance shall be void; otherwise the same shall remain in full force and virtue.

It is therefore ordered that said Charles E. Cook, relator, be released from the custody of said respondents.

151 And afterwards, to wit, on the 13th, 18th, and 27th days of March, A. D. 1891, the following proceedings were had and entered of record in said court, to wit:

Order M'ch 13, '91.

PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* CHARLES E. COOK *vs.* JAMES H. GILBERT *et al.* } 89625. Petition.

This day came again the said parties, by their respective attorneys, and on motion the hearing of said cause is hereby continued until Wednesday, March 18th, A. D. 1891.

Order M'ch 18, '91.

THE PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* CHARLES E. COOK *vs.* JAMES H. GILBERT *et al.* } 89625. 10399. Petition.

On motion it is ordered by the court that the hearing of said cause be and it is continued until the 20th instant.

Order M'ch 27, '91.

THE PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* CHARLES E. COOK *vs.* JAMES H. GILBERT *et al.* } 89625. 10399. Petition.

This day came the said parties, by their respective attorneys, and by agreement it is ordered by the court that the hearing of said petition be and it is continued until April 14th next, at two o'clock in the afternoon.

And afterwards, to wit, on the 14th day of April, A. D. 1891, there was filed in said court a certain replication which is in the words and figures following, to wit:

152 STATE OF ILLINOIS, } ss:
County of Cook, }

In the Circuit Court of Cook County.

THE PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* CHARLES E. COOK }
vs.
JAMES H. GILBERT *et al.* }

And now comes the said relator, by his attorneys, and for replication to the said return of the said respondents says that he is not and was not at the time of the commission of the said supposed offence or crime and never has been a fugitive from justice of the State of Wisconsin or elsewhere, and that he was not at the time of the commission of the said alleged offense or crime in the said State of Wisconsin, but was in the State of Illinois, and that he was at the time of the commission of the said alleged offense or crime and for a long time theretofore and ever since has been a citizen and resident of the city of Chicago, in the county of Cook and State of Illinois; and this relator avers that he is not and never was a fugitive from the justice of the said State of Wisconsin; and this relator further avers that there is no such crime as illegal banking under or known to the statute or laws of the said State of Wisconsin; and for further replication he denies each and every averment and allegation of the said return; and for further replication this relator says that prior to the issuing of the said pretended warrant in the said return mentioned, and on or about the 5th day of July, 1890, the governor of the said State of Illinois, upon the requisition and demand of the executive authority of the said State of Wisconsin therefor and upon the representation then made that this relator was then a fugitive from justice and upon a copy of an affidavit or affidavits charging this relator with having committed against the laws of the said State of Wisconsin the crime of illegal banking, did issue his
153 certain other warrant of the date last mentioned, under the great seal of the said State of Illinois and signed by the governor thereof and directed to any sheriff, coroner, or constable of any county in said State of Illinois, commanding them to arrest and secure this relator and deliver him into the custody of the agent therein named of the executive authority of the said State of Wisconsin, in form as in said pretended warrant in said return mentioned; and this relator avers that the said pretended crime in said warrant in said return mentioned and the said pretended fleeing from justice therein mentioned, and on which the same is based, were the same pretended crime and the same pretended fleeing from justice which are in said warrant of July, 1890, mentioned, and not other or different pretended crimes or fleeing from justice, and this relator, after the issuing of said warrant of July, 1890, was in the city of Chicago, in said county of Cook, for some time after the

issuing of said warrant of July, 1890, and for two months and upwards prior to the expiration of six months from and after the issuing of the said warrant of July, 1890, all of which time this relator was openly and publicly attending to his affairs and business in said city of Chicago, in said county of Cook, and was not in any way secreting himself from service, so that this relator could have been taken upon said warrant of July, 1890, all of which was well known to the complainant and to the executive authority and public authority of the said State of Wisconsin, and that said warrant of July, 1890, has never been recalled or cancelled, but at the time of the issuing of the said supposed warrant in said return mentioned was in full force and outstanding; and so this relator says that the said supposed warrant in said return mentioned was issued without authority and was and is void and of no effect.

D. J. SCHUYLER,
JOHN S. MILLER &
WM. A. FOSTER,
Attorneys for Petitioner.

154 And afterwards, to wit, on the 16th day of May and the 6th day of June, A. D. 1891, the following, among other, proceedings were had and entered of record in said court, to wit:

Order May 16, '91.

PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* CHARLES E. COOK *vs.* JAMES H. GILBERT *et al.*	89625.	10399.	Petition.

By agreement, ordered that the hearing of said cause be, and it is, continued until the 23rd instant.

Order June 6, '91.

PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* CHARLES E. COOK *vs.* JAMES H. GILBERT, Sheriff of Cook County, Illinois.	89625.	Petition.

This day came again the said parties, by their counsel, and thereupon the court, having heard the arguments of counsel and being fully advised in the premises, doth order and adjudge that the writ of *habeas corpus* heretofore in this case sued out be, and the same hereby is, dismissed; and it is further ordered that the said relator, Charles E. Cook, be surrendered to the custody of the said defendant, James H. Gilbert, sheriff, to be by him disposed of as he is commanded in and by the warrant of extradition issued by the governor of Illinois and in the name of said sheriff herein mentioned and set forth, and it is further ordered that said relator pay the costs of this proceeding, to be taxed, and that execution issue therefor.

155 UNITED STATES OF AMERICA.

STATE OF ILLINOIS, } ss:
Cook County, }

I, Henry Best, clerk of the circuit court of Cook county, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete copy of a certain petition for *habeas corpus* filed March 11th, 1891, writ issued March 11th, 1891, replication filed April 14th, 1891, and all orders made and entered of record in a certain cause lately pending in said court on the common-law side thereof between People of the State of Illinois *ex rel.* Charles E. Cook, petitioner, and James H. Gilbert *et al.*, respondents.

In witness whereof I have hereunto set my hand and
[SEAL.] affixed the seal of said court, at Chicago, in said county, this 4th day of March, A. D. 1892.

HENRY BEST, *Clerk.*

STATE OF ILLINOIS, } ss:
County of Cook, }

I, M. F. Tuley, chief justice of the circuit court of Cook county, in the State of Illinois, hereby certify that Henry Best, who signed the above certificate, was at the time of signing the same and is now clerk of the said circuit court of Cook county, duly commissioned and qualified; that said court is a court of record, having a clerk and seal; that said attestation is in due form and by the proper officer according to the laws of the State of Illinois, and that the above signature of said clerk is genuine.

Witness my hand and seal, at Chicago, in said county of Cook, this 4th day of March, A. D. 1892.

M. F. TULEY, [SEAL.]
Chief Justice of the Circuit Court of Cook County.

156 UNITED STATES OF AMERICA.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Henry Best, clerk of the circuit court of Cook county, in the State of Illinois (said court being a court of record), do hereby certify that the Hon. M. F. Tuley, whose name is subscribed to the annexed and foregoing certificate, was at the time of the signing thereof and now is chief justice of said circuit court, duly elected, commissioned, and qualified, and that his said signature is genuine.

In witness whereof I have signed my name and affixed the seal of said circuit court, at my office, in the city of Chicago, in said Cook county, this 4th day of March, 1892.

[SEAL.] HENRY BEST, *Clerk.*

157 United States Circuit Court, Eastern District of Wisconsin.

In Re CHARLES E. COOK. *Habeas Corpus.*

Mr. Chas. H. Aldrich & Mr. Jos. V. Quarles, for petitioner.
Mr. W. C. Williams & Mr. P. G. Lewis, for respondent.

SATURDAY, *March 5th*, 1892.

It is agreed between the parties that the petitioner, Charles E. Cook, was in the State of Wisconsin on the morning of June 20th, 1890, and passed through Dodge county from Beaver Dam, en route to Chicago, reaching Chicago on or about one o'clock of that day.

It is agreed that the deposit of Herman Becker, of $175, mentioned in the requisition proceedings, was made at or about four o'clock in the afternoon of that day.

Mr. WILLIAMS: It was after one o'clock; he stopped in Beaver Dam over night; he left there at 8 o'clock in the morning and was not at Juneau; he did not stop at Juneau on the 20th of June.

It is agreed also that a petition for *habeas corpus* was sued out by Cook in the State court, a record of which is set out in the replication to the traverse.

Mr. ALDRICH: There are two facts we have not covered by the agreement. In offering the testimony on that subject I will take the ruling of the court upon it. I do not offer it with the idea that the court can investigate the fact of whether or not a crime
158 has been committed. I deem this court has no power of that kind. I want to show that Mr. Cook was in Wisconsin in connection with the formation of a bank at Beaver Dam, and that the Park National bank, in which he was a large stockholder, failed on that day. My purpose in showing that is to show that he was not fleeing from the State—that he had no idea of the commission of a crime. If that is conceded I am prepared to go on with my argument.

Mr. WILLIAMS: I think we had better take what testimony there is to get the facts before the court as they are.

CHARLES E. COOK, being duly sworn, testified:

My name is Charles E. Cook. I am the petitioner in this case.

Q. You may state on what day the Park National bank failed.

A. 20th of June, 1890.

Q. State whether or not you had any knowledge of the impending failure.

A. I had not.

Q. Seized by the Comptroller of the Currency on that day?

Objected to as immaterial.

A. It was.

Q. What was the amount of stock you had in that bank?

A. $19,000.

Q. You were one of the owners of the Bank of Juneau?
A. I was.
Q. Who was the owner with you?
A. Frank Leak.
Q. You may state at what price you had an opportunity to sell your stock in the Park National bank, immediately before going to Juneau—what it was worth.

Objected to as without the scope of the *habeas corpus* proceedings. Taken subject to the objection.

A. $120 per share.

Q. You may state whether or not you had any knowledge
159 of the deposit of Herman Becker or of the impending failure of the Bank of Juneau.

A. Not the slightest.
Q. And whether or not the Bank of Juneau would have been compelled to suspend but for the failure of the Park National bank.

Objected to. Objection sustained. Exception.

Q. I believe you said you had no knowledge of the deposit of Herman Becker?
A. Not the slightest.
Q. Whether you had any knowledge that any charges had been preferred or were about to be preferred against you in the State of Wisconsin.
A. Not the slightest.

Cross-examined by Mr. WILLIAMS:

Q. The partner of whom you speak was Mr. Leak?
A. Yes, sir.
Q. Was he an actual or active partner in the Bank of Juneau in any sense whatever?
A. He was, so far as his interest went.
A. He was, so far as his interest went.
Q. How much of an interest did he have there?
A. One-tenth.
Q. And you had nine-tenths?
A. I had.
Q. Is it not a fact that Frank Leak was in charge of another bank at Hartford, Wisconsin, and did not have or exercise any supervision or control over the Bank of Juneau?
A. Mr. Frank Leak was cashier of the Bank of Hartford, and gave that bank the bulk of his time; of course we consulted together as to the management of the Bank of Juneau.
Q. Is not it a fact that Frank Leak did not exercise any control over or give any personal supervision to the Bank of Juneau?

160 A. I think it is—that he did not give any personal supervision whatever.

Q. Is not it a fact that you yourself gave all directions to the cashier, hired and employed all the help in the Bank of Juneau, and discharged the help?

A. Mr. Leak was consulted upon the management of the bank.

Q. You did it?

A. I might have been the mouth-piece; yes.

Q. Is not it also a fact that you were at Juneau on an average of twice a month during the existence of the bank there to oversee the conducting of the bank?

A. I was not there oftener than from four to six weeks.

Q. From four to six weeks during the time of the existence of the bank?

A. Yes, sir.

Q. Do you know of Mr. Leak ever having been at the bank of Juneau or ever having given any directions there at all to any of the employés?

Objected to as immaterial. Objection sustained. Exception.

Q. You were examined, were you not, in Chicago, your deposition taken, in the suit of August Shanfelter against Hiram W. Sawyer, assignee?

A. Yes, sir.

Q. In that examination, testifying as a witness in that case, was this question asked you and did you answer as follows: "Which one of you had the general charge of the Bank of Juneau? A. I had it"?

Objected to as immaterial.

Mr. WILLIAMS: It may bear upon the question of his presence here on the day before, and the day, and the question of being a fugitive.

Q. Is not it a fact you did have general charge of the bank?

161 A. In consultation with Mr. Leak; yes, sir.

Q. Is not it true you had general charge of the bank without consultation with Mr. Leak?

A. No, sir.

Q. Is not it true that you were in Juneau superintending the affairs of that bank as often as once a month instead of once in six weeks?

A. From once a month to once in six weeks.

Q. You came into Dodge Co. the night before or day before to Beaver Dam?

A. Before the 19th; yes, sir.

Q. Were you not in Juneau on the 19th?

A. No, sir.

Q. Did you not go from Juneau to Beaver Dam on the evening of the 19th?

A. No, sir; I went from Hartford to Beaver Dam on the morning of the 19th.

COURT (Judge Jenkins): Passing through Juneau?

A. No, sir.

Re-examined:

Q. I understood you to say you did not know of the failure or impending failure of the Park National bank until you reached Chicago?

Objected to.

COURT: He has answered that.

A. I did not.

Q. You were asked whether you were in Juneau on the 19th. How long prior to that time had it been since you had been in Juneau?

A. I don't recollect definitely; possibly three weeks; possibly not more than two.

Q. Who was in charge of that bank?

A. Mr. Richardson.

162 Q. Did you meet him on the occasion of that visit?

A. The last visit I made certainly he was there.

Q. You do not understand me. I want to know whether you met Mr. Richardson on the 19th or 20th.

A. No, sir; I had not seen him for two or three weeks before.

Recross-examined:

Q. Do you remember what day of the week that was you went to Chicago?

A. Friday morning.

Q. Were not you in Juneau on Wednesday or Thursday, either or both of these days, prior to the Friday you went to Chicago?

A. No, sir.

Q. Were you there any time that week?

A. No, sir.

LOUIS E. ROCK, being sworn, testified (examined by Mr. ALDRICH):

I reside in Milwaukee.

Q. You may state what business, if any, you had with Mr. Cook on the 19th or 20th of June, 1890, and where you met him.

A. Mr. Cook came from Beaver Dam to Hartford the morning of the 19th. I met him at the depot, and he was there that day with me. We talked over business with reference to getting a bank started there, and he left the next morning, the morning of the 20th of June.

Q. Where did you leave him?

A. I came down the road with him as far as Horicon.

Q. That was en route for Chicago?

A. Yes, sir; I saw him leave Horicon on the train for Chicago.

Q. About what time was that?

A. I think the train left Beaver Dam about 9 o'clock in the morning, and it leaves Horicon about half past nine or such a matter. I went back to Beaver Dam.

Q. What knowledge do you have, if any, as to whether or
163 not Mr. Cook was in Juneau at that time or near that time?

A. Mr. Cook wrote me and said he would come——

Q. You need not state the contents—whether you received letters from him.

A. I received letters and made an appointment to come to Beaver Dam. We were to meet there.

Q. State whether or not you received any telegram as to the place of meeting.

A. No telegram then.

Q. At what day was the telegram?

A. I did not receive any telegram.

Q. You received a telegram from Cook on January 20th—from what place?

A. From Chicago, after he got back. He asked me to come to Chicago at once; that he was in trouble. That was the very day he left me that morning. I got a telegram from him in Chicago that very night.

Q. What knowledge have you upon the subject as to Mr. Cook's whereabouts during the weeks prior to June 20th?

A. I was expecting him up there all the time.

Q. In communication with him or otherwise?

A. In communication with him.

Q. From what place?

A. Chicago.

Q. Are you able to state whether or not he was in Juneau during the month of June?

A. I am satisfied that he was not.

Q. Have you any letters with you from Mr. Cook?

A. I have.

Q. Will you produce them?

Mr. WILLIAMS: There is no controversy except with reference to a day or two—the 18th, 19th, and 20th of June.

Mr. ALDRICH: All right; I pass that.

Q. Are you able to state whether he was in Juneau during the 18th, 19th, or 20th of June?

164 A. He was not.

COURT (Judge GRESHAM): Were you in Juneau at that time?

A. No, sir.

Q. Were you with Mr. Cook?

A. I was with him in Beaver Dam the 19th and 20th. He came there the morning of the 19th.

Cross-examined:

Q. That is all you know about it; as to whether he was there any other time you don't know of your own knowledge?

A. Only as I draw my information from the correspondence.

COURT: You can look at the letter.

A. He wrote me where he would be and the rest of the arrange-

ment was followed out. I don't know the date. I have not the letter.

G. D. RICHARDSON, being sworn, testified as follows:

Q. Where were you in June, 1890?
A. In Juneau.
Q. Acting in what capacity?
A. Cashier of the Bank of Juneau.
Q. The bank was owned by Cook & Leak?
A. Yes, sir.
Q. Can you state whether or not Mr. Cook was in Juneau during the 18th, 19th, or 20th of June, 1890?
A. He was not.
Q. For how long prior to that time.
A. I could not state positively.

Cross-examined:

Q. That is your best recollection, is it?
A. Yes, sir.
Q. You have no recollection of seeing him on those three days?
A. I have not.

Mr. WILLIAMS: I will proceed with the witness as my own witness.

Q. Who employed you?
165 A. Mr. Cook.
Q. Did you ever receive any orders or directions from any one else besides Mr. Cook?

Objected to as immaterial and incompetent; the only question is as to whether or not he is a fugitive from justice.

Question waived.

Q. Did you receive instructions from Mr. Cook to solicit and obtain deposits in that bank?
A. I did.

C. P. PACKER, being sworn, testified:

I reside in Chicago.
Q. What relations, if any, did you occupy to the Park National bank?
A. I was its president.
Q. You may state whether you are acquainted with Charles E. Cook.
A. I am.
Q. State whether or not you did any business with him on or about June 20th.
A. I did.
Q. Are you able to state where he was on June 20th?
A. I am.
Q. Where did you meet him on that day?

A. He was at the bank about one o'clock in the afternoon of June 20th, the day of the seizure.

Q. You may state whether or not you saw Mr. Cook a few days prior to that time; and are you able to state what days?

A. I saw him and was with him on Tuesday and Wednesday of that week. June 20th came on Friday.

Q. Where was that?

A. At the bank, in Chicago.

Q. Were you with him all the afternoon of that day?

A. Friday I was with him considerable; yes, sir; and also on Saturday considerable, the day following.

166 Cross-examined:

Q. You would not say what hour on Friday it was that you saw Mr. Cook?

A. It could not have been latter than 2 o'clock.

Q. It might have been two or half past 2?

A. It was after dinner.

Q. You think you saw him on Tuesday before in Chicago?

A. Yes, sir; I saw him on Tuesday before.

Mr. COOK recalled by Mr. ALDRICH:

Q. You may state where you were on Tuesday and Wednesday prior to that time.

A. In Chicago.

Q. When did you leave Chicago, and where did you go to—what train and how?

A. I left Wednesday afternoon, and went to Schliesingerville, on the Wisconsin Central, and Mr. Leak met me there and drove me over to his house, at Hartford. I staid until the following morning, taking the train the following morning for Beaver Dam.

Cross-examined:

Q. You are positive of that?

A. Yes, sir; very positive.

Mr. ALDRICH: That is all our evidence, your honors.

JOHN B. BECKER, being duly sworn, testified.

(Examined by Mr. WILLIAMS:)

I reside in the city of Juneau, Dodge Co., Wisconsin. I am marshal of the city at present.

Q. Were you in the city of Juneau on the 18th, 19th, and 20th of June, 1890, at the time of the failure of the bank?

A. I was.

Q. You know Charles E. Cook, do you?

A. Yes, sir.

167 Q. Were you acquainted with him at that time?

A. I was.

Q. Had you seen him frequently?

A. A number of times.
Q. At Juneau?
A. At Juneau.
Q. Can you tell us now whether Charles E. Cook was in the city of Juneau on the 18th, 19th, and 20th of June, 1890?
A. He was.
Q. When?
A. Either Wednesday or Thursday. I think it was Wednesday.
Q. The Wednesday before the bank failed?
A. Yes, sir.
Q. Did you see him there?
A. I did.
Q. For any length of time—were you with him?
A. I rode with him from Juneau to Minnesota Junction in a 'bus in the afternoon, to go up to meet the 5.20 train going east towards Hartford. He took that train. I see him get on.

COURT: Do you feel confident of that?

A. Yes, sir.
Q. Did you have any personal acquaintance with him at that time? Did you speak with him or talk to him?
A. We spoke together going up in the 'bus and also at the depot at the junction. Talked about his going to open a bank at Beaver Dam.

Cross-examined by Mr. ALDRICH:

Q. What were you doing on that day?
A. During the day I was attending court at Juneau.
Q. What court?
A. County court.
Q. Who was judge of that court?
A. Judge Lamareaux.
168 Q. What was on trial there that required your attention?
A. A certain case on trial there.
Q. The one that required your attendance?
A. Was the case of Barney Smith against George Werden.
Q. What were you in connection with that case—a witness?
A. No, sir; I was under sheriff at that time.
Q. What was your conversation with Mr. Cook on that day?
A. Going to the junction in the 'bus we talked with reference to him opening a bank in Beaver Dam; that was about all.
Q. What were you going up to the train for?
A. I don't know exactly whether I went up there to meet somebody. I could not tell what I went for that afternoon.
Q. You went to the train frequently, didn't you?
A. I went up whenever I had to go somewheres or meet somebody up there.
Q. You saw Mr. Cook a number of times in Juneau?
A. Yes, sir.
Q. How are you able to distinguish this particular time and fix the date?

A. The fact that the bank failed just a few days after that.

Q. On that occasion did you see Mr. Cook talking with Mr. Malone?

A. I think so.

Q. Where was that?

A. I saw Mr. Malone and Mr. Cook talking together just before Mr. Cook got into the 'bus.

Q. And that was on the street, was it not?

A. On the street.

Q. You have called Mr. Malone's attention to this fact?

A. I have.

COURT: Where did Mr. Cook — the omnibus?

A. At Juneau.

Q. What place in Juneau?

A. Just right by the bank there—right in front of Louis' building.

169 Q. Did he come out of the bank to take the 'bus?

A. He stood there when I saw him. I got in the 'bus down the street further and came up there and him and Mr. Malone was standing there talking.

Q. Standing where?

A. Right in front of the bank—between the bank and Louis' building.

Dr. W. E. HALLECK, being sworn, testified:

I am a physician and surgeon and live at Juneau, Wisconsin.

Q. Practicine medicine there, are you?

A. Yes, sir.

Q. Were you living there in the monet of June, 1890?

A. I was.

Q. And following your profession?

A. Yes, sir.

Q. Do you know Charles E. Cook?

—. Yes, sir.

Q. Did you know him in June, 1890?

A. Yes, sir.

Q. Had you known him before that time or during the time the bank was there?

A. Yes, sir.

Q. Personally acquainted with him, were you?

A. I met him a number of times.

Q. Can you tell us whether Charles E. Cook was in Juneau on the 18th, 19th, or 20th, or within two or three days preceding the failure of the bank?

A. I saw Mr. Cook there on the 20th, about half-past one o'clock; not on the 20th—on the 18th.

Q. The bank was not open on the 21st?

A. No, sir.

Q. Where did you see him?

170 A. In front of McCullough's store, talking with one of the McCullough boys.

Cross-examined:

Q. How are you able to fix this date?

A I fix it on account of the bank stopping two days after that, and I remember the time well.

Q. When was your attention first called to it?

A. The next morning when the bank suspended.

Q. Who called your attention to the fact Mr. Cook had been there two days before?

A. I saw him. They spoke about it; asked when he had been there.

Q. Have you any memorandum or anything of that kind?

A. No, sir.

Q. Are you able to state what you were doing the day before that time?

A. I was attending to my business.

Q. And on that day attending to your business?

A. Yes, sir.

Q. And on the next day?

A. Yes sir.

Q. Nothing to distinguish that day from any other day except the fact you saw him at one o'clock?

A. About one, just when I came down after dinner.

Q. Do you know where he went that day?

A. No, sir.

Re-examined:

Q. You are positive as to the length of time before the failure this was?

A. Yes, sir; the second day before.

171 J. T. LEES, being sworn, testified:

Q. What is your business and where do you reside?

A. I live in Juneau; my business is general merchant; I have a store there.

Q. Were you living there and in business there in June, 1890, at the time of the bank failure?

A. Yes, sir.

Q. Do you know Charles E. Cook?

A. Yes, sir.

Q. Did you know him at that time?

A. I did.

Q. Had you seen him prior to that time, so as to be familiar with his face and person?

A. I had.

Q. Can you tell us whether Charles E. Cook was in the city of Juneau some time within two or three days prior to the time the bank closed?

A. Yes, sir; I saw him there; I am not positive which day; it was a day or two prior to the closing of the bank.

Q. Where did you see him?

A. On the street.
Q. Did you talk with him yourself at all?
A. No, sir; not that day.
Q. Did you see him more than once—I mean at that time?
A. No, sir; I don't think I did.

Cross-examined:

Q. When had you seen him before in Juneau?
A. I should say about, possibly, three to four weeks before that time.
Q. Where did you see him then?
A. I could not swear as to that; it might possibly been in the bank. I have seen him there and I have met him on the street.
Q. With whom was he when you saw him on the 18th or 19th?
172 A. Walking up the street towards the bank in that neighborhood.
Q. What time of day?
A. Shortly after dinner, I think. I was just coming from dinner.
Q. Have you any memorandum or anything that enables you to speak positively about the date?
A. Nothing, only the closing of the bank.
Q. When was your attention first called to the fact you would be needed here as a witness on that subject—as to the day when Mr. Cook was in Juneau?
A. I thought of it as soon as the bank closed.
Q. You thought of it as having seen him there?
A. A day or two before.
Q. When did you first communicate that information to others?
A. About a year ago, I think.
Q. Do you recollect the occasion of your so doing?
A. Yes, sir.
Q. Who was it—to whom?
A. I could not state. Mr. Lewis, I believe, for one.
Q. Did you make any memorandum or anything?
A. No, sir; I did not.

Re-examined:

Q. You feel sure it was within that time prior to the failure?
A. A day or two prior to the failure of the bank.

173 J. E. MALONE, called by petitioner, being sworn, testified:

My name is J. E. Malone; I reside at Juneau, Wisconsin.
Q. Were you formerly prosecuting attorney there?
A. I was.
Q. State whether you are acquainted with Charles E. Cook.
A. I am. I was acquainted with him in 1890.

Mr. WILLIAMS: You are one of the attorneys of Mr. Cook, and have been acting for him right straight through?

A. I am not his attorney in this proceeding; I have acted for him at Juneau.

Mr. WILLIAMS: You have participated in these proceedings?

Mr. ALDRICH: He has been here to keep us advised.

Mr. WILLIAMS: He has participated in the argument also.

Q. Did you see Mr. Cook in Juneau on the 18th, 19th, or 20th of June?

A. I did not.

Q. Something has been said about a conversation which you had with Mr. Cook on the stre-t?

A. Yes, sir.

Q. About this time?

A. Yes, sir.

Q. Do you recollect meeting Mr. Cook?

A. I did not meet him that week; of that I am positive. I tried that lawsuit of Barney Smith's, but I did not see Mr. Cook at Juneau that week, and I did not speak to him. I tried that case for Barney Smith; that was on the 18th; we looked it up together, Mr. Becker and myself, in order to come to a conclusion; he said he thought I tried the case, and he was mistaken about Cook being there. The last time I saw him was one of two Saturdays I went to Beaver Dam, and he was at Horicon; came from Hartford
174 either the Saturday before or two weeks before the closing of the bank. I learned that from my memoranda of where I go to. That is the last time I saw Mr. Cook and the last time I spoke to him.

By Mr. WILLIAMS:

Q. This case of Smith was tried on the 18th?

A. I think so. Mr. Becker and I looked it up.

COURT: Do you remember a conversation with Mr. Cook at the place mentioned on any other previous occasion?

A. I do not. I did not have any conversation with him that week at Juneau, nor did I see him in Juneau that week.

By Mr. WILLIAMS:

Q. You have been Mr. Cook's attorney through all these proceedings, have you not?

A. I don't know what you mean. Outside of these *habeas corpus* proceedings I have been.

Q. From the time of his arrest down to the present time?

A. I was retained by Mr. Cook the day after the failure of the bank. I was not his attorney in the proceedings in Chicago.

175 And afterwards, to wit, on the thirty-eighth day of said term, to wit, on the 5th day of March, A. D. 1892—present, the Hon. Walter Q. Gresham, circuit judge presiding, and the Hon. James G. Jenkins, district judge—the following proceedings were had, to wit:

In the Matter of the Petition of CHARLES E. COOK for a Writ of *Habeas Corpus.*

This day came the parties, by their counsel, Messrs. Charles H. Aldrich and J. V. Quarles appearing for the petitioner, and Mr. W. C. Williams, for the respondent, Colden A. Hart, sheriff of Dodge county, Wis., and this matter came on to be heard upon the petition, supplemental petition, return thereto, traverse of said return, replication thereto, and testimony taken in open court, and was argued by said counsel, and, the hearing not being concluded, the same was adjourned until Monday afternoon next.

And afterwards, to wit, on the thirty-ninth day of said term, to wit, on the 7th day of March, A. D. 1892—present, the said circuit and district judges—the following proceedings were had, to wit:

In the Matter of the Petition of CHARLES E. COOK for a Writ of *Habeas Corpus.*

This day came the parties, by their counsel, and the hearing of this petition was resumed and concluded, when the court took the same under consideration.

And afterwards, to wit, on the forty-ninth day of said term, to wit, on the 4th day of April, A. D. 1892, the following proceedings were had, to wit:

176 *Order Discharging Writ, &c.*

In the Matter of the Petition of CHARLES E. COOK for a Writ of *Habeas Corpus.*

This day came the parties, by their counsel, Mr. John Barton Payne appearing for the petitioner and Mr. W. C. Williams for the respondent, and, on consideration of this matter, it is ordered by the court that the writ of *habeas corpus* heretofore issued herein be, and hereby is, discharged, and that the petitioner, Charles E. Cook, be, and hereby is, remanded to the custody of the sheriff of Dodge county, Wis.

And it is further ordered that said petitioner pay the costs of this proceeding, to be taxed.

Appeal.

And came said petitioner and prayed an appeal to the Supreme Court of the United States, and filed his assignment of errors and also his bond in the sum of two hundred and fifty dollars, with Joseph N. Hagins as surety, conditioned to prosecute his appeal to effect and answer all damages and costs if he failed to make his plea good; which bond is approved by the district judge.

Whereupon it is ordered by the court that said appeal be, and hereby is, allowed, and a citation issued, returnable the 4th day of May next.

And it is further ordered that the petitioner enter into recognizance in the sum of $12,000, with sureties to be approved, condi-

tioned for his appearance to abide the order and judgment of the said Supreme Court upon his said petition for a writ of *habeas corpus*.

And which assignment of errors is as follows:

177 UNITED STATES OF AMERICA:

In the United States Circuit Court, Eastern District of Wisconsin.

In Re CHARLES E. COOK. Petition for *Habeas Corpus*.

Whereas, on the 4th day of April, A. D. 1892, the said court denied the petition filed by the petitioner herein and ordered that he be remanded to the custody of the sheriff of the county of Dodge, State of Wisconsin, by an order entered of record on said day, from which order said petitioner has prayed an appeal to the Supreme Court of the United States:

Now, therefore, the said Charles E. Cook hereby assigns as error in said order and proceeding that the said circuit court of the United States erred in refusing to grant the petition of your petitioner and to discharge him as therein prayed.

CHARLES E. COOK,
By ALDRICH, PAYNE & DEFREES,
His Attorneys.
QUARLES, SPENCE, HOYT & QUARLES,
Of Counsel.

Petition for Appeal.

UNITED STATES OF AMERICA:

In the United States Circuit Court, Eastern District of Wisconsin.

In Re CHARLES E. COOK. Petition for *Habeas Corpus*.

The above-named petitioner, Charles E. Cook, conceiving himself aggrieved by the order entered on the 4th day of April, A. D. 1892, in the above-entitled proceeding, doth hereby appeal from said order to the Supreme Court of the United States, and he prays that this his appeal may be allowed, and that a transcript of the record and proceedings and papers upon which said order was duly au-
178 thenticated may be sent to the Supreme Court of the United States.

CHARLES E. COOK,
By ALDRICH, PAYNE, & DEFREES,
His Attorneys.
QUARLES, SPENCE, HOYT & QUARLES,
Of Counsel.

And which appeal bond is as follows:

Know all men by these presents that we, Charles E. Cook, as principal, and Joseph N. Hagins, as surety, all of Chicago, Cook county, State of Illinois, are held and firmly bound unto Colden A.

Hart, sheriff of Dodge county, Wis., in the full and just sum of two hundred and fifty dollars, to be paid to the said Colden A. Hart, sheriff of Dodge county, Wis., or to his successor or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 4th day of April, in the year of our Lord one thousand eight hundred and ninety-two.

Whereas lately, at a term of the circuit court of the United States for the eastern district of Wisconsin, in a proceeding in said court upon the application of said Charles E. Cook for a writ of *habeas corpus* a judgment was rendered against the said Charles E. Cook, and the said Charles E. Cook having taken an appeal to reverse the judgment in the aforesaid proceeding, and a citation directed to the said Colden A. Hart, sheriff of Dodge county, Wis., citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington on the 4th day of May, A. D. 1892:

Now, the condition of the above obligation is such that if the said Charles E. Cook shall prosecute his appeal to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

CHARLES E. COOK. [SEAL.]
JOSEPH N. HAGINS. [SEAL.]

Approved by—
JAMES G. JENKINS,
U. S. Judge.

April 5, 1892.—Recognizance of petitioner filed as follows:

179 UNITED STATES OF AMERICA, *Eastern District of Wisconsin,* } *ss:*

In the Matter of the Application of CHARLES E. COOK for Writ of *Habeas Corpus.*

We, Charles E. Cook, as principal, and John Barton Payne and Joseph N. Hagins, all of the city of Chicago, State of Illinois, acknowledge ourselves jointly and severally indebted to the United States of America in the full and just sum of twelve thousand dollars, lawful money of the United States, to be levied of our goods and chattels, lands and tenements, upon this condition: that if the said Charles E. Cook shall personally be and appear before the Supreme Court of the United States on the fourth day of May, A. D. 1892, at the term to be holden at Washington, D. C., and from day to day thereafter during said term and each succeeding term of said court until duly discharged, then and there to abide the order and judgment of said court upon his application for a writ of *habeas corpus*, and not depart said court without leave, then this recognizance to be void or else valid.

CHARLES E. COOK.
JNO. BARTON PAYNE.
JOSEPH N. HAGINS.

Taken and acknowledged in open court this 4th day of April, A. D. 1892.

JAS. G. JENKINS,
U. S. Judge.

180 *Opinion.*

United States Circuit Court, Eastern District of Wisconsin.

Habeas corpus before Gresham and Jenkins, JJ.

In Re CHARLES E. COOK.

On the 13th of February, 1892, upon the petition of Charles E. Cook, claiming to be restrained of his liberty by one Colden A. Hart, sheriff of the county of Dodge, State of Wisconsin, a writ of *habeas corpus* was issued out of this court, to which the sheriff made due return, which the petitioner duly traversed.

The facts disclosed by the record, so far as essential to the determination of the matter, may be summarized as follows:

On the 5th day of March, 1891, one George W. Morse complained to a justice of the peace of the county of Dodge that the petitioner, Charles E. Cook, and one Frank Leak on the 7th of May, 1889, opened a bank at Juneau, in the county of Dodge, styled the "Bank of Juneau," and entered upon and engaged in a general banking business, having a pretended capital of ten thousand dollars, and continued in such business soliciting and receiving deposits up to and including the 20th day of June, 1890, upon which day the bank closed its doors and failed; that Cook was the principal owner of such bank, owning nine-tenths interest therein, Leak owning one-tenth interest therein; that Cook was an officer of the bank and had the general supervision of the business, which was transacted either by him personally or under his order and direction by one Richardson, acting as his agent; that from January 6th, 1890, to June 20th, 1890, Cook, by the inducements and pretenses so held out by him, received and accepted on
181 deposit from citizens of the county, money to the amount of twenty-five thousand dollars; that this was done by the express order and direction of Cook, and with his full knowledge, and that no part of said amount has been paid or returned to the depositors; that on the 6th day of January, 1890, Cook and Leak and the bank were severally insolvent and have since so continued, and that such insolvency of the parties and of the bank was well known to Cook on and ever since the 6th of January, 1890, and that at the time of receiving all the deposits stated Cook knew, and had good reason to know, that he and Leak and the said bank were each and all of them unsafe and insolvent; that on the 20th of June, 1890, at Juneau, in the county of Dodge, Cook, as such banker, did accept and receive a deposit in said bank of Juneau from one Herman Becker, a resident of the county of Dodge, of $175, which has never been paid or returned; that at the time of receiving such deposit Cook knew and had good reason to know that he and the

said Frank Leak and the said bank of Juneau were each and all of them unsafe and insolvent, and that such deposit from Becker and all the other deposits mentioned were received by Cook with intent to cheat and defraud, contrary to the statute of Wisconsin. Thereupon the justice of the peace to whom the affidavit and complaint had been presented issued the usual warrant for the arrest of Cook, upon which, accompanied with several affidavits in support of the principal charge, and also upon an affidavit of the then sheriff of the county of Dodge, who states certain ineffectual attempts to find Cook in the city of Chicago, and who states "that he knows that said Charles E. Cook was at said times and now is a fugitive from justice," and also upon the application of the district attorney for the county of Dodge, who states that "said Charles E. Cook is a fugitive from justice and has fled from the justice of the State of Wisconsin and avoided arrest," the governor of the State of Wisconsin, on the 9th day of March,
182 1891, issued his requisition upon the governor of the State of Illinois requiring the apprehension of the said Cook and his delivery to an agent deputed to receive and convey him to the State of Wisconsin; that requisition was honored by the executive of the State of Illinois, who issued his warrant on the 10th day of March, 1891, to the proper peace officers of that State, reciting that the executive authority of the State of Wisconsin had demanded the apprehension and delivery of Charles E. Cook, "represented to be a fugitive from justice," and had produced and laid before him authenticated copies of the charge hereinbefore recited and requiring the officers to whom the warrant was addressed to arrest and secure the said fugitive, Charles E. Cook, if to be found within the limits of the State, and to deliver him into the custody of the agent of the executive authority of the State of Wisconsin appointed to receive the said fugitive.

Under such warrant Cook was arrested by the sheriff of the county of Cook, in the State of Illinois, and delivered to the agent of the executive authority of Wisconsin, who conveyed him to the county of Dodge, in the State of Wisconsin, where he was examined before the magistrate issuing the warrant and held to answer to the charge.

Subsequently and in November, 1891, the district attorney filed his information against the petitioner Cook, setting forth the offense charged in the original complaint before the magistrate upon which he was arraigned and to which he was compelled to plead and held to bail in the sum of five thousand dollars.

Afterward and prior to the writ of *habeas corpus* Cook was surrendered by his bail and was held by the sheriff of the county of Dodge under process issued out of the said court to answer the charge.
183 At the February term, 1891, of the circuit court of Dodge county, the grand jury of the county presented seven indictments against the petitioner Cook, charging him with other and different violations of the criminal laws of the State of Wisconsin, some for larceny, some for embezzlement, and some for receiving deposits in the bank, knowing the bank to be unsafe and insolvent. All these offenses are charged to have been committed in connec-

tion with this business of banking, the times of the alleged offense varying, but all charged to have been committed between the 3rd and 20th days of June, 1890.

To the several indictments Cook was required to plead and under them he was held to bail, and subsequently and before this writ of *habeas corpus* by his bail surrendered to the sheriff, in whose custody he was at the time of the issuance of the writ.

The sheriff justified his detention of Cook under the writs issued upon the information and the several indictments stated.

It was established upon the hearing to the satisfaction of the court that Cook for some years prior to the 20th of June, 1890, and for some years prior to his arrest upon the warrant of the executive of Illinois had been and still is a resident of the city of Chicago, in the State of Illinois; that he made occasional visits to the State of Wisconsin in connection with his banking business at Juneau and elsewhere; that he left Chicago on the 17th day of June and went to Hartford, in the county of Washington, State of Wisconsin, where he spent the whole of the 18th day of June, thence proceeding to Beaver Dam, in the county of Dodge, where he was engaged during the whole of the 19th of June in business not connected with the Bank of Juneau; that early on the morning of the 20th of
184 June he left Beaver Dam and made a continuous journey to Chicago, arriving there at two p. m. of the 20th, and did not on the occasion of that visit to Wisconsin visit or pass through the village of Juneau and had not been at Juneau for some three weeks prior to the closing of the doors of the bank on the 20th of June.

It was also conceded at the hearing that the particular deposit by Herman Becker charged in the complaint upon which the requisition proceedings were had was actually made at 4 o'clock in the afternoon of the 20th of June and after the petitioner's arrival in Chicago.

It is also proper to state that the petitioner testified at the hearing that he was a large stockholder in the Park National bank of Chicago, which was closed by the comptroller of the currency on the 20th day of June, 1890; that he left Beaver Dam for Chicago upon a telegram stating that trouble existed with reference to that bank; that that bank was, in fact, solvent, and has paid all its debts, and that it never should have been closed by the comptroller; that the closing of that bank compelled the closing of the doors of the Bank of Juneau; that up to that time, as he claims, not only the bank of Juneau, but that he and Mr. Leak were solvent, and that their subsequent insolvency was brought about by the improper closing of the Park National bank.

Mr. Chas. H. Aldrich and Mr. J. V. Quarles, for petitioner.

Mr. W. C. Williams and Mr. P. G. Lewis (dist. att'y, Dodge Co.), for respondent.

JENKINS *J.* (after stating the facts):

The record presents for *consi*consideration several grave and important questions:

First. Whether it be competent for the judicial tribunals to review the action of the executive of Illinois in issuing his warrant.

Second. If his action be subject to review whether that action can by enquired into after the surrender of the alleged fugitive from justice and when he is held under State process.

185 Third. Whether the petitioner was a fugitive from justice.

Fourth. Whether, assuming the legality of the proceeding for his rendition, he can be held or tried upon any other charge than that for which he was surrendered.

Undoubtedly, as between independent sovereignties, the surrender of fugitives rested merely in comity and was confined to those whose crimes "touched the State" or were so enormous as to make them *hostes humani generis*. Vattel, book 1, c. 19; book 2, c. 6. If there existed any moral obligation it was quite imperfect and was not recognized by the law of nations. The surrender could not be demanded as of right, but, as Mr. Marcy observes in his Hulsemann letter, "comity may sometimes yield what right withholds." So also before the Revolution a criminal fleeing from one colony found no protection in another. He was arrested wherever found and sent for trial to the place of his offending, and this without formal compact, treaty, or agreement between the colonies. (Commonwealth *v.* Deacon, 10 S. & R., 129.)

In all such cases the manner in which he was brought within the jurisdiction could not be pleaded by the prisoner as a defense to the crime with which he was charged, or as ground for his discharge without trial. Each sovereignty had the right to determine for itself whether a fugitive from the justice of another sovereignty should find refuge within its jurisdiction, and, if it so pleased, to deliver the fugitive to the sovereignty whose justice he had offended. Every independent nation possesses, in absence of positive law or of treaty obligation, the inherent right of expulsion of undesirable inhabitants.

So also the prisoner could not rightly urge, by way
186 of defense or in abatement, that he was forcibly and by abduction brought within the jurisdiction from a foreign country. The violation of the sovereignty of an independent nation is matter which touches the political relations of the two countries and is of no concern to him. He may have, it is true, recourse in the law for the forcible abduction, but the manner of his subjection to the jurisdiction does not impair that jurisdiction nor avail the prisoner against responding for his offense. (*Ex parte* Scott, 9 B. &. C., 446; State *v.* Brewster, 7 Vermont, 118; Dow's case, 18 Pa. State, 37; Kerr *v.* Illinois, 119 U. S. 4361.)

It is, however, more than doubtful whether in those countries where the common law prevails and where personal liberty is the chief concern of the State and is protected by constitutional safeguards, there exists any power in the absence of treaty—which is a law of the land (U. S. *v.* Rauschor, 119 U. S., 407)—to make surrender of a fugitive. It is true that such surrender was made by this Government in 1864 in the case of Arguelles. In that case no opportunity was permitted by writ of *habeas corpus* to test the legality

of the seizure. The action of the executive was severely criticized and was sought to be justified upon the ground that "a nation is never bound to furnish asylum to dangerous criminals who are offenders against the human race." Possibly the nature of the offence—selling human beings into slavery—may have induced the action of the executive and may extenuate an act which is opposed to the holding of the State Department from an early date to the present time, and to the declared opinions of such eminent statesmen as Albert Gallatin, John Quincy Adams, Mr. Livingston, Mr. Forsyth, Mr. Calhoun, Mr. Cass, Mr. Marcy, Mr. Hamilton Fish, Mr. Evarts, Mr. Frelinghuysen, and Mr. Bayard, and would seem a violation of the fundamental law that no man shall be de-
187 prived of life, liberty, or property without due process of law.

In most civilized countries the imperfect moral obligation to surrender fugitives from justice has, by force of treaties, ripened into absolute duty. It cannot now be doubted that in those countries dominated by the common law extradition can only be had as provided by treaty and for those offences only denominated in the treaty.

The question of interstate rendition rests, however, upon different ground. The States are not in respect to the surrender of fugitives independent sovereignties; they cannot contract with each other for such surrender. By the compact of union they have yielded their sovereignty in that regard to the Federal Government. Such rendition of fugitives can only be rightfully effected under the provisions of the Federal Constitution and the laws passed in pursuance thereof.

That Constitution provides (sub-sec. 2, sec. 2, art. 4) that "a person charged in any State with treason, felony, or other crime who shall flee from justice and be found in another State shall, on demand of the executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime."

Whether since the Constitution a fugitive, forcibly abducted from one State and delivered into the jurisdiction of another, can be held for trial in the latter may, perhaps, be an open question. In Mahon *v.* Justice, 127 U. S., 700, such a case was presented to the Supreme Court. It was held by the Court, Justice Bradley and Justice Harlan dissenting, that no right secured under the Constitution of the United States had been violated by such abduction, and the Federal Court could not interfere, "whatever effect may be given by the State court to the illegal mode in which the defendant was brought from another State." Notwithstanding some expressions in the
188 opinion of the Court which would seem to assert the lawful jurisdiction of the State courts under such circumstances, the point ruled is that no Federal question was involved. Upon the main question the authorities are not in accord. It is, happily, not necessary for us to consider that question here.

This constitutional provision was adopted, as one author has expressed the thought, that "the law might everywhere and in all cases be vindicated." The duty imposed is imperative, taking away all discretion in case of an executive demand "and makes that a

matter of duty which else had been a matter of grace." (Chief Justice Gibson, Dow's Case, 18 Pa. St., 37; see also Matter of Voorhees, 32 N. J. L., 145.)

The constitutional provision not being self-executing, Congress provided for its enforcement by act of 12 Feb., 1793, preserved as section 5278 of the present revision. It was thereby enacted that "Whenever the executive authority of any State or Territory demands any person as a fugitive from justice of the executive authority of any State or Territory to which said person has fled and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory charging the person demanded with having committed treason, felony, or other crime certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, it shall be the duty of the executive authority of the State or Territory to which such person has fled to cause him to be arrested and secured and to cause notice of the arrest to be given to the executive authority making such demand or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within six months from the time of the arrest the prisoner may be discharged.
189 All costs or expenses incurred in the apprehending, securing, and transmitting such fugitive to the State or Territory making such demand shall be paid by such State or Territory."

It is apparent that the act provides no means to compel the performance of the obligation enjoined, and that the duty of the executive upon whom demand is made is imperative. Whenever the executive of a State "shall demand any person as a fugitive from justice" of the executive of the State to which such person has fled and shall produce a copy of the charge, certified by the executive of the State from whence the person so charged has fled, it shall be the duty of the executive of the State to which such person shall have fled to cause his arrest and surrender to the demanding State. The certificate of the executive authority of the demanding State is conclusive as to the charge of crime. The executive of the State where the fugitive is found has no right to look behind it or to question it or to enquire into the character of the crime charged. (Commonwealth of Ky. *v.* Dennison, Governor, &c., 24 How., 66.) Whether the person demanded be a fugitive from justice is a question of fact to be determined in the first instance by the executive of the State upon which demand is made upon such evidence as he may deem satisfactory. (Roberts *v.* Reilly, 116 U. S., 80–95.) But this investigation is purely *ex parte*, the demanded person having no right of opportunity to be heard. Here there was no finding by the executive in terms that Cook was a fugitive from justice. The recital in the writ is: "The executive authority of the State of Wisconsin demands of me the apprehension and delivery of Charles E. Cook, represented to be a fugitive from justice." It is, however, ruled that the issuance of the warrant of rendition is of itself *prima facie* finding of the fact of flight and sufficient to justify the

removal until the presumption in its favor is overthrown by
190 contrary proof. (Roberts *v.* Reilly, *supra.*) That decision by its very terms implies that the action of the Governor is only presumptively regular and can be reviewed by the courts.

Surely it cannot be claimed that such action is conclusive upon personal right and may not be inquired of by judicial tribunals. Surely it cannot be that the right to personal liberty hangs upon so slender a thread as the arbitrary will of the authorities of the demanding and surrendering States. "No person shall be deprived of life, liberty, or property without due process of law." That is the fundamental law of the land coming to us from Magna Charta. It is not due process of law which condemns without hearing, which convicts without trial. The phrase "due process of law" or its synonym, "law of the land," cannot have a better definition than that given by Mr. Webster in the Dartmouth College case. "By law of the land is most clearly intended the general law, a law which hears before it condemns, which proceeds upon enquiry, and renders judgment only after trial. The meaning is that every citizen shall hold his life, liberty, property, and immunities under the protection of the general rules which govern society." (Dartmouth College *v.* Woodward, 4 Wheat., 5191.)

It is essential to any compliance with such executive demand that the person whose surrender is demanded should be adjudged a fugitive from the justice of the demanding State. The decision of the executive is not conclusive of that fact, and so we are of opinion that the action of the executive is reviewable by Federal tribunals, and that it is competent for the courts to determine whether
191 in fact the demanded person was a fugitive from justice. *In re* Manchester, 5 Cal., 237; *Ex parte* Joseph Smith, 3 McLean, 121; Jones *v.* Leonard, 50 Iowa, 106; *In re* Mohr, 73 Ala., 503; Hartman *v.* Nodine, 63 Ind., 255; Wilcox *v.* Wiltze, 34 Ohio St., 51, 52.

But it is said that here the petitioner has been rendered to the demanding State and is now held, not under the constitutional provision, but by virtue of State process. In other words, that the act of rendition has been consummated; that the Federal process has spent its force and is *functus officio;* that the writs of the State control the custody of the petitioner, and no Federal question is here involved.

In respect to this question we are without the decisive guidance of the ultimate judicial authority. We are referred to but two cases in the subordinate courts, and in these cases the judges seem to have arrived at opposite conclusions. In the case of Noyes, 17 Albany Law Journal, 407, before Judge Nixon, of the district of New Jersey, it was held that a fugitive from justice extradited from one State in the Union to another may be detained for prosecution, notwithstanding it may appear that the arrest under the rendition proceedings was without legal authority. In Tennessee *v.* Jackson, 36 Fed. R., 258, Judge Kay reached an opposite conclusion, and held that as the petitioner had never been in the demanding State he could not be a fugitive from the justice of that State, and that

the jurisdictional question could be asserted after his rendi-
192 tion had been accomplished, and he was held under process of the demanding State.

The proceedings here were instituted by the State now claiming jurisdiction of the petitioner. The custody of him has been obtained solely by virtue of that demand. He is subjected to the custody of the State of Wisconsin by the power of the United States acting through the executive of Illinois, at the instance and upon the demand of the State of Wisconsin. It is insisted for the petitioner that if he was not in fact a fugitive from justice the executive of Illinois was without jurisdiction to yield him to the State of Wisconsin; that the latter State cannot claim any benefit of its unauthorized act and hold him under its process, because such custody was obtained by the wrongful act of the State in violation of the supreme law of the land. It is said that in such case, when the original proceeding by which one is brought within the jurisdiction is unauthorized by law, the detention is improper, although sought to be justified under process valid within the jurisdiction to which the party has been unlawfully brought; that wanting the jurisdictional fact of flight, the proceeding was *coram non judice;* that the question of flight being jurisdictional is open to inquiry as well after as before the surrender; that the petitioner is physically within the State because compelled by the supreme law unlawfully put in operation, but that he is not here for the purpose of jurisdiction by the State so unlawfully, under guise of the law, obtaining the possession of his body.

Upon the other hand, it is urged that the executive had the right in the first instance to determine the question of flight upon such evidence as to him was persuasive of the fact; that his warrant unassailed is sufficient to justify the removal and surrender of
193 one charged with crime and is a perfect justification for the arrest and custody of the alleged offender; that the surrender of his body to the demanding State by virtue of such warrant was lawful; that upon surrender the warrant had spent its force and thereafter the prisoner is in custody rightfully, not by virtue of the warrant, but under process of the State, and that therefore no Federal question is involved.

We are of opinion that the contention in behalf of the petitioner cannot be sustained. The vice of this position is in the assumption that the fact of flight is jurisdictional in the sense that executive action is void if, in point of fact, the demanded person be not a fugitive from justice. The power to act upon a given state of facts and to decide whether that state of facts exists constitutes jurisdiction. The decision therein is conclusive until properly set aside. The Constitution and the act of Congress have lodged with the executive of the State, upon whom proper demand is made for one alleged to be a fugitive from justice, the jurisdiction to determine whether the person so charged be such fugitive, and his determination is sufficient to justify the surrender. He has, by virtue of the law and of the action of the executive of the demanding State, jurisdiction of the subject-matter. He has jurisdiction of the person of the peti-

tioner by virtue of his presence within the State. His determination partakes of the nature of a judicial proceeding. It is true his action is *ex parte*. Therefore it is that the courts will review his determination; but that fact is not availing to destroy jurisdiction. He may err, but—to use the expression of Chief Justice Ryan—he had "jurisdiction to commit error." His determination of the fact
194 of flight, evidenced by the issuing of his warrant, suffices to justify the removal until the presumption in its favor is overthrown by contrary proof in a proper proceeding. (Roberts *v.* Reilly, 116 U. S., 80–95.) His warrant, unassailed by competent authority, is complete justification for the arrest and surrender of the alleged fugitive. When so delivered by virtue of such warrant his surrender is lawful, and the demanding State obtains rightful possession of his person, and may lawfully subject him to its criminal process for the offense charged. The executive warrant has then spent its force. It is no longer operative. The alleged offender is no longer subjected to deprivation of liberty by virtue thereof, but is rightfully held under the process of the State. When that has happened no Federal question remains. If the fact of flight be jurisdictional in the sense that it must exist as essential to the validity of any action by the executive, then it must always remain open to inquiry, as well after surrender as before, as well after trial and conviction as before, as well after sentence as before, as well during imprisonment upon conviction and sentence as before surrender or trial, for the reason that upon such postulate the executive would not have jurisdiction because he so determined, and any inquiry by *habeas corpus*—the only means of review of his decision—would not bar another writ. In such case also the officer executing the warrant of the executive would not be justified by the writ, but by the jurisdictional fact of flight upon which the writ is predicated, and which, if the jurisdictional fact did not exist, would be mere waste paper. Such confusion, necessarily resulting from such holding, is not to be lightly entertained. It cannot be assumed that any such meaning of the constitutional provision or the act of Congress was possible to the minds of the framers. The fact
195 of flight may be in a sense jurisdictional to removal, as one says a criminal court has jurisdiction only of crime, but such court has jurisdiction to determine whether a certain act charged to have been committed is or is not a crime. Its decision therein, although erroneous, is not void; so here the jurisdiction to determine the fact of flight is lodged with the executive. He has jurisdiction of the subject-matter. His warrant is valid until his determination of the fact of flight is properly reversed. When, therefore, such valid warrant has been executed, the surrender thereunder is lawful and the party lawfully subjected to the State jurisdiction.

It was urged in argument that under such ruling there will exist opportunity for oppression; that the executive may be imposed upon by *ex parte* and false evidence and the warrant be improvidently issued, and that so it may happen, as was the case in Tennessee *v.* Jackson, *supra*, that one be surrendered who was never in the de-

manding State, and could not therefore be a fugitive from its justice. This is possible, but the remedy would seem to rest with the executive to take action to allow the prisoner proper opportunity to appeal to the law. Possibly the case stated would be deemed such a fraud upon the law as to bring it within cognizance of the courts.

If, however, we should prove to be in error in our conclusion and the question of flight remains open for consideration, notwithstanding the surrender under the warrant, we are persuaded that here the executive warrant was providently issued and the surrender justified by the facts and the law.

196 We now come to the consideration of the question whether the petitioner was a fugitive from justice with the intendment of the Constitution.

In this connection it is insisted for the petitioner that it was impossible for him to have committed the crime charged against him, because it is conceded that he was not within the State of Wisconsin at the time of or voluntarily after the receipt of the deposit charged, and could not therefore be a fugitive from justice.

The law of Wisconsin (R. S. Wis., § 4541) renders it criminal for any officer, director, stockholder, cashier, teller, manager, messenger, clerk, or agent of any bank to accept or receive on deposit or for safe keeping any deposit of money when he knows or has good reason to know that such bank is unsafe or insolvent. In construing the act regard must be had to the mischief sought to be prevented. The purpose of the law is manifest. The act was designed to prevent fraudulent banking and to protect the public from dealing with such unsafe or insolvent concerns. The manual receipt of the deposit is but one step and the final step in the consummation of the offense. There must precede the unsafe and insolvent condition the representation of safety and solvency and the knowledge of the unsafe and insolvent condition. These are the essentials of the offence. The receipt of the deposit may be by an innocent instrument of a guilty officer of the bank. It is a criminal act to hold out an insolvent bank as safe or solvent, effective to the consummation of crime upon the receipt of the deposit. The open door of a bank is an invitation to depositors. The open door of a bank is a representation to the public that the bank is safe and solvent. The keeping open of a bank by the superintending officer or proprietor is an authority to his clerks to receive deposits. If the doors are opened for the purposes of business, with guilty knowledge by him of the unsafe or insolvent condition of the bank, and a deposit is received

197 by his agents, it is received by him. It was his act, for which he must respond to the law. His actual presence at the time is unessential. In contemplation of law he is present by his agent deputed to perform the wrongful act he has planned. It was his act as certainly as though he personally received the deposit. (State *v.* Caldwell, supreme court of Iowa, 44 N. W. R., 700.) His will contributed to the wrong-doing, and he is responsible for the act done by his agent by his authority the same as though performed by himself alone. It is because his will set the force in motion that

was operative to crime. Thus, Mr. Bishop observes, one may commit an offence against a State upon whose soil he has never set his foot, as in putting forth a libel (Commonwealth *v.* Blanding, 3 Pick., 304,) or a threatening letter (Esser's case, 2 East P. C., 1125,) or a letter enclosing a forged instrument to defraud the one to whom it is addressed (People *v.* Rathbun, 21 Wend., 509,) or a letter making a false pretense to one who parts with his goods in the place of the receipt of the letter. (Reg. *v.* Jones, 1 Eng., L. & Eq., 533; Reg. *v.* Leech, 36 Eng., L. & Eq., 589; Norris *v.* The State, 25 Ohio State., 217.) But it is objected that the charge is that the petitioner received the deposit, and therefore his personal presence was essential to the commission of the act charged. The objection is untenable. "The act may be charged directly as his act and proof that he did the act through the agency of another will sustain a conviction." State *v.* Caldwell, *supra.*

In Roberts *v.* Reilly, 116 U. S., 80–97, the Supreme Court defines the phrase "fugitive from justice" and declares that to be a fugitive from justice in the sense of the act of Congress regulating the subject "it is not necessary that the party should have left the State in which the crime is alleged to have been committed after an indictment — found or for the purpose of avoiding a prosecution anticipated or begun, but simply that having within a State
198 committed that which by its laws constitutes a crime, when he is sought to be subjected to its criminal process to answer for his offence he has left its jurisdiction and is found in the territory of another." In other words, there need be in his departure from the State no element of conscious flight. It suffices that after the commission of the offence he has merely departed the jurisdiction of the State.

The question then recurs: Was the petitioner within the State of Wisconsin within the intendment of the law at the time of the commission of the alleged offence?

In *Ex parte* Reggel, 114 U. S., 642, 653, it was ruled that the proof tendered the executive made a *prima facie* case of flight. There, as here, the statement was only that the person demanded "was a fugitive from justice" without statement of probative facts.

In Roberts *v.* Reilly, *supra*, the supreme court, referring to the question of flight, also declared that "the determination of the fact by the executive of the State in issuing his warrant of arrest upon a demand made on that ground, whether the writ contains a recital of an express finding to that effect or not, must be regarded as sufficient to justify the removal until the presumption in its
199 favor is overthrown by contrary proof."

Presumable therefore this petitioner was a fugitive from justice. The onus is cast upon him to satisfy the court that he was not. He claims that it is conclusively established that he was not such fugitive, because he was not within the demanding State at the time the deposit was made. He has certainly established that fact; but is that conclusive that he was not a fugitive from justice? or, to express the proposition differently, Is one who within the jurisdiction hath set in motion the machinery for crime and departs the

jurisdiction before the consummation of the crime a fugitive from justice? When the criminal act charged is one as to which it is essential that several acts or facts should concur, and which may occur at different times, if the party charged commits within the State any one of the acts constituting the crime, but departs the State before the happening of other acts contemplated and authorized by him or upon the happening of events necessarily resulting from his act, can he be deemed a fugitive from justice? We are of opinion that he must be so regarded.

The purpose of the constitutional provision was that criminals should find no asylum within any State of the Union, that "the law might everywhere and in all cases be vindicated." It will not do to refine too curiously upon such enactments so that the very design of the law shall prove abortive, so that that shall become a shield and a protection which was designed as a weapon of offence.

Can it be that one may not be regarded a fugitive from justice who within a State hires another to kill and murder, but before the killing departs the jurisdiction to avoid the consequences of the murder he has designed? Can it be that if one within a State makes false representations to procure the goods of another and departs the State before that other actually parts with his property on the faith of these representations, he may not be deemed a fugitive from justice? Or, to use the forcible illustration of counsel at the argument, if one placed a dynamite bomb with clock attachment upon the premises of another that will explode only after the lapse of a certain time, and death results so that the act is murder, but he departs the State before the explosion to avoid the consequences of his act, is he not to be regarded as a fugitive from justice? To put the question is to answer it. The subsequent event was the consequence of the act, naturally resulting from it. The subsequent event was designed to happen from and by reason of the act done. The event when it occurs as the consequence of the act gives quality to the act and renders it criminal. The result was the foreseen and designed consequence of the act, stamping it as a crime. It is immaterial whether the agency employed be an inanimate object or a sentient being. The result was designed by and naturally flowed from his original act, which by reason of the result and the foreseen and intended consequence is criminal.

Departure from the jurisdiction after the commission of the act in furtherance of the crime subsequently consummated is flight from justice within the meaning of the law.

So here, if, as charged, this bank was insolvent or unsafe on and after the 6th day of January, 1890, and if, as charged, Cook had guilty knowledge thereof and, notwithstanding, authorized, sanctioned, and directed the keeping open of the bank and the receipt of deposits, he must be deemed a fugitive from justice, although he departed the State before the deposit was actually received.

The petitioner has not shown that the bank was not insolvent as charged. He has not shown that he was unaware of its condition. He has merely shown that he was a stockholder in the Park Na-

tional bank to the amount of $19,000; that that bank was
201 improvidently closed and has since paid its debts. He has not shown, however, that its capital was unimpaired, so that his interest therein was intact. He has not shown that the Bank of Juneau or its owners possessed any means to meet the $25,000 of deposits charged to have been received nor has he shown that the closing of the Park National bank was the occasion of any loss to the Juneau bank or necessarily prevented the continuance of its business. If the complaint lodged against him, and upon which he was surrendered, be true this bank was insolvent on and after the 6th day of January, 1890, to the knowledge of Cook. Between that date and the closing of the bank on June 20th, 1890, deposits were received to the amount of $25,000, which were owing depositors at the time of closing the doors. At that time its entire assets consisted of $3,048 in cash and $2,000 in securities and Cook is charged to have withdrawn all the capital and all of the deposits, except the amount of the assets stated; and on the 23rd of June the proprietors of the bank assigned. These facts we must regard, under the ruling of the Supreme Court, so far as they bear on the question of flight, as presumptively true. They have not been contradicted. Cook has merely shown that his interest in the Park National bank was put in jeopardy; but stock in one bank is not capital in another. He has failed to declare what became of the capital of the Juneau bank or of the deposits received. He has failed to account for the meagre assets of the bank. So upon this showing and in the facts of the *prima facie* evidence of flight, derived from the action of the executive of Illinois in issuing his warrant of rendition, we are bound to assume for the purposes of his hearing, with a view to ascertain if he may be regarded a fugitive from justice, that when last within the State of Wisconsin, some two or three weeks prior to the closing
of the bank, that bank was unsafe and insolvent, to his
202 knowledge, and was by his direction thereafter kept open for business with the design that his servants should take and receive deposits; that he designed the fraud which was consummated by the actual receipt of the deposit, departing the jurisdiction intermediate the design and the act to accomplish that design and the actual receipt of the deposit. He was, therefore, in our judgment, a fugitive from justice within the intendment of the law.

It is further urged that, being rendered by the executive of Illinois for trial upon the offence charged, Cook cannot be held or tried upon any other charge until he has had proper opportunity to return to the State of Illinois. It was held in U. S. *v.* Rauscher, 119 U. S., 407, that when one was extradited by the government of Great Britain under a treaty for trial upon the particular offence charged he cannot lawfully be tried for any other offence; that he is clothed with the right to exemption from trial for any other offence until he has had opportunity to return to the country whence he was taken for the purpose alone of trial for the offence specified in the demand for his surrender.

If the principles of extradition are applicable and controlling in interstate rendition, this ruling must be held to determine the right

of exemption, notwithstanding the decision of the supreme court of Wisconsin in State *ex rel.*, &c., *v.* Stewart, 60 Wis., 587. It is not essential, however, that we should at this time pass upon this question, as the petitioner must be remanded to the jurisdiction of the State court. If, after trial upon the charge upon which he was surrendered, he should be held upon another charge or should be placed upon trial for such other charge before his trial upon the charge for which he was surrendered, the Federal tribunals will be accessible to him if his right be thereby invaded.

203 UNITED STATES OF AMERICA, } *ss:*
Eastern District of Wisconsin, }

I, Edward Kurtz, clerk of the circuit court of the United States of America for the eastern district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate with their originals now on file and remaining of record in my office, and that they are true copies of such originals and correct transcripts therefrom, being a transcript of record in matter of the petition of Charles E. Cook for a writ of *habeas corpus.*

Seal U. S. Circuit Court, Eastern District Wisconsin.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court, at the city of Milwaukee, in said district, this 29th day of April, in the year of our Lord one thousand eight hundred and ninety-two, and of the Independence of the United States the 116th.

EDWARD KURTZ, *Clerk.*

204 UNITED STATES OF AMERICA, *ss:*

To Colden A. Hart, sheriff of Dodge county, Wisconsin, Greeting:

[SEAL.] You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the 4th day of May, A. D. 1892, pursuant to an appeal in the circuit court of the United States for the eastern district of Wisconsin, wherein Charles E. Cook is appellant and you are appellee, to show cause, if any there be, why the judgment rendered against the said Charles E. Cook should not be reversed and speedy justice done to the parties in that behalf.

Witness the Honorable James G. Jenkins, district judge of the United States for the eastern district of Wisconsin, at the city of Milwaukee, this 4th day of April, A. D. 1892, and of our Independence the 116th.

JAS. G. JENKINS,
U. S. Judge.

I accept service of above citation this 20th day of April, A. D. 1892.

W. C. WILLIAMS,
Att'y for C. A. Hart.

Endorsed on cover: Case No. 15,037. E. Wisconsin C. C. U. S. Term No., 1067. Charles E. Cook, appellant, *vs.* Colden A. Hart, sheriff of Dodge county, Wisconsin. Filed May 4th, 1892.

Supreme Court of the United States

October Term, 1893.

CHARLES E. COOK, Appellant,

v.

COLDEN A. HART, Sheriff of Dodge County, Wisconsin.

No. 1,067

Appeal from the Circuit Court of the United States for the Eastern District of Wisconsin.

BRIEF FOR THE APPELLANT.

CHARLES H. ALDRICH,
For Appellant.

WASHINGTON:
Gibson Bros., Printers and Bookbinders.
1893.

I accept service of above citation this 20th day of April, A. D. 1892.

W. C. WILLIAMS,
Att'y for C. A. Hart.

Endorsed on cover: Case No. 17,037. E. Wisconsin C. C. U. S. Term No., 1067. Charles E. Cook, appellant, *vs.* Colden A. Hart, sheriff of Dodge county, Wisconsin. Filed May 4th, 1892.

146 U.S. 163

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CLERK.

Supreme Court of the United States.

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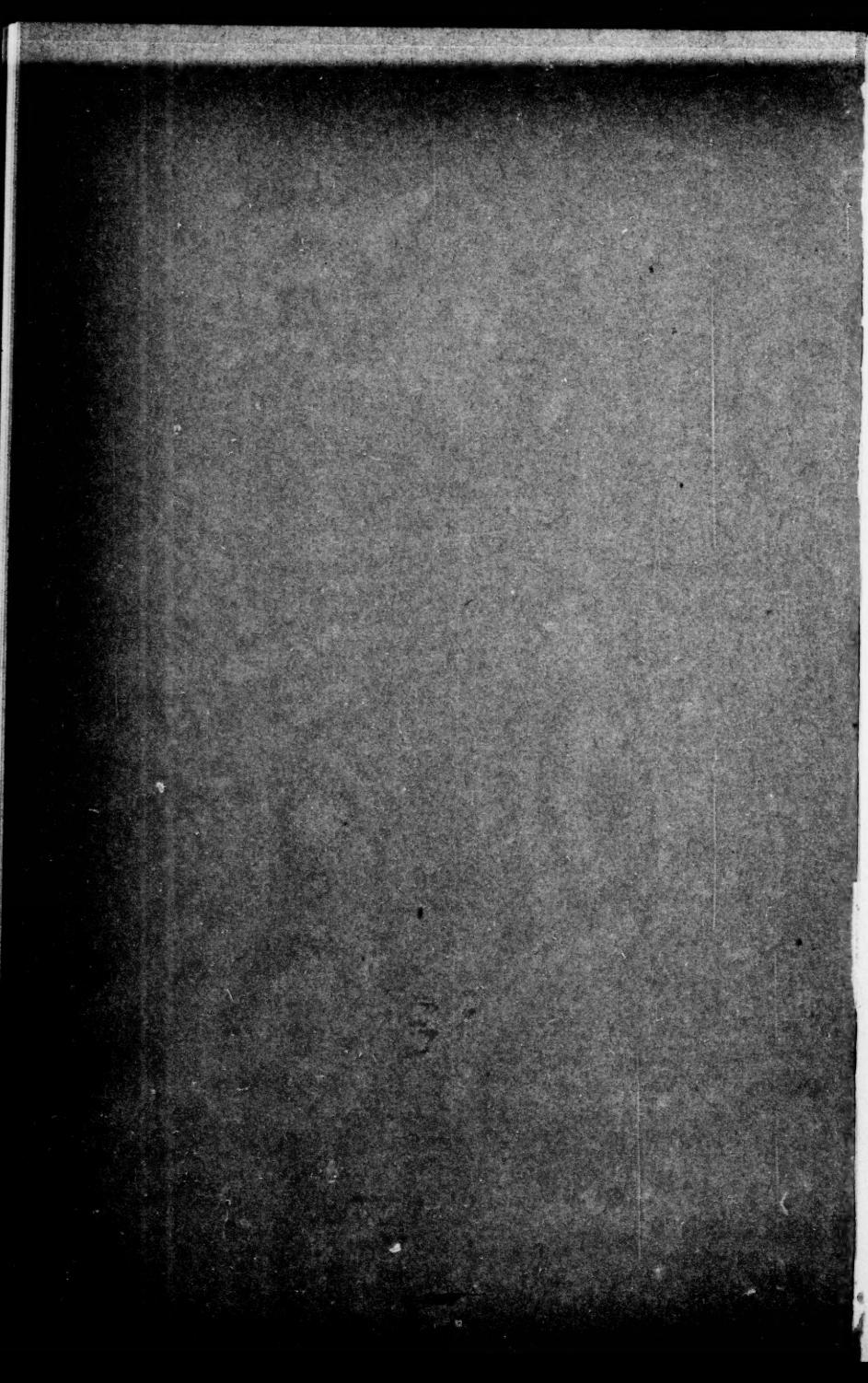

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v.

COLDEN A. HART, SHERIFF OF DODGE COUNTY, WISCONSIN.

No. 1067.

Appeal from the Circuit Court of the United States for the Eastern District of Wisconsin.

Brief for the Appellant.

STATEMENT OF FACTS.

Charles E. Cook was, on the twentieth day of June, 1890, and had been continuously for many years prior thereto, a citizen of the State of Illinois, resident and domiciled at Chicago. He was a broker and money loaner, and with one Frank Leake owned two private unincorporated banks in Wisconsin, one at Juneau styled the "Bank of Juneau," the other at Hartford styled the "Bank of Hartford." He was also a stockholder to the extent of $19,000.00 par value, in the Park National Bank of Chicago, which,

on the day named, was seized by order of the Comptroller of the Currency. He could have sold this stock at any time prior to the failure at $120.00 per share. The bank has since, without assessment, paid its depositors in full. The seizure of the Park National was unexpected and was immediately followed by the suspension of the Wisconsin banks owned by Mr. Cook. These banks owed the depositors at the date of such suspension about $45,000.00, which, with the exception of about $9,000.00, had been paid at the date of the proceedings hereinafter referred to. (Record, 48.) Since that time they have been paid with the exception of three small amounts. The fact is, that the money had been largely withdrawn from Wisconsin, invested in paper which could not be immediately realized upon, and suspension was necessary. It was simply the frequent case of one man dragged down by the failure of others.

I make these last suggestions of facts, occurring since the trial, because of certain statements made and inferences indulged in by the court below not based upon the record, to which I ask the attention of the Court later in this argument.

On the 5th day of March, A. D. 1891, an affidavit was filed by George W. Morse and three others, citizens of Dodge county, sworn to before a justice of the peace, whose official character is certified to by George W. Morse, the same person who made the affidavit, and who was then clerk of the circuit court of Dodge county. He also applies for the requisition (Record, 5), and the same magistrate attests the oath and again has his official character vouched for by the prosecuting witness.

On July 3, 1891, a requisition was issued by the Governor of Wisconsin for Mr. Cook. He was charged with "illegal banking."

While there are allegations in the affidavit stating that the petitioner was insolvent from January 6, 1890, and while so insolvent had accepted and received deposits from that date up to and including the day the bank finally closed, no specific or certain charges are made, except with regard to one transaction, which charge was in the words and figures following (Record, 4):

"That the aforesaid insolvency was well known to said Cook ever since said 6th day of January, 1890; that on the 20th day of June, 1890, at about four o'clock in the afternoon of that day, at said county of Dodge, said Cook and Leake did, as such bankers, receive a deposit in said bank from one Herman Becker, to the amount of $175 in money; that said deposit was received by the order and direction of said Charles E. Cook.

"That at the time of receiving said deposit said Charles E. Cook well knew and had good reason to know that he, the said Cook, the said Leake, the firm of Charles E. Cook and Company, and said bank were all insolvent and unsafe."

And again, on page 10:

"That on the 20th day of June, 1890, at the said city of Juneau, in the said county of Dodge and State of Wisconsin, said Charles E. Cook, as such banker as aforesaid, did accept and receive a deposit in said bank of Juneau, from one Herman Becker, a resident of said county of Dodge, one hundred and seventy-five dollars in money, the property of said Herman Becker, of the value of one hundred and seventy-five dollars, and the same has never been paid or returned to said Herman Becker, or to any one for him, but is still due him from said bank of Juneau and the owners thereof; that at the time of receiving said deposit of one hundred and seventy-five dollars from said Herman Becker as aforesaid the said Charles E. Cook knew and had good reason to know that he, the said Charles E. Cook, the said Frank Leake, and the said Bank of

Juneau were each and all of them unsafe and insolvent; that said deposit from said Herman Becker and all the other deposits hereinbefore mentioned were received by said Charles E. Cook with intent to cheat and defraud, contrary to the statute in such case made and provided, and against the peace and dignity of the State of Wisconsin. Wherefore said George W. Morse prays that a warrant may issue according to the statute in such case made and provided, and that the said Charles E. Cook may be arrested and dealt with according to law."

I shall spend no time in argument of the proposition that this is the only charge made against the petitioner. That the averments of insolvency generally, uncoupled with specific instances of receipt of deposits, does not constitute any crime and is insufficient, is settled by *United States* v. *Rauscher*, 119 U. S. 420.

It has been held that greater certainty is required in requisition proceedings than in an indictment.

People ex rel. Lawrence v. *Brady*, 56 N. Y. 182.

Spear on Law of Extradition, 470, 471.

It would be easy to demonstrate that the general averments are consistent with entire solvency and honesty. The affidavit is plainly based upon an examination of the books of the bank alone. The affiant could know nothing of Cook's estate in Chicago and elsewhere. It was a private partnership, and if Cook had an estate it made no difference what the condition of the bank might be. The partners' solvency made the bank solvent.

The requisition was issued and honored. Mr. Cook was arrested, rendered up for illegal banking and as a "fugitive from justice."

It is conceded that Mr. Cook was not in the State of Wisconsin at the time this deposit was received (Record

p. 89), though it is admitted that on the morning of that day he was in another part of the State, taking a train at 8 o'clock A. M. from Beaver Dam and arriving in Chicago about 1 o'clock of that day. He passed through Dodge county, but was not at the towns where the banks were located, and had no communication with any one connected therewith. (Record, p. 89.) On the hearing he was asked (Record, p. 90) the following questions and made the following answers:

Q. You may state at what price you had an opportunity to sell your stock in the Park National Bank immediately before going to Juneau—what was it worth?

Objected to as without scope of the *habeas corpus* proceedings. Taken subject to the objection.

A. $120 per share.

Q. You may state whether or not you had any knowledge of the deposit of Herman Becker or of the impending failure of the bank of Juneau.

A. Not the slightest.

Q. *And whether or not the Bank of Juneau would have been compelled to suspend but for the failure of the Park National Bank.*

Objected to. Objection sustained. Exception.

Q. I believe you said you had no knowledge of the deposit of Herman Becker?

A. Not the slightest.

Q. Whether you had any knowledge that any charges had been preferred or were about to be preferred against you in the State of Wisconsin?

A. Not the slightest.

There is not a word or syllable of testimony, it is earnestly insisted, that tends in the slightest degree to cast a shadow of doubt on this statement.

In this connection I desire to say, as stated to the court

below (Record, p. 89), that it is not claimed that it is competent for a court in *habeas corpus* proceedings to investigate the fact of whether or not a crime has been committed. The testimony offered and ruled out was competent, it is submitted, as tending to show with what mind or intention he went out of Wisconsin on that day. He fully, both by himself and other witnesses, shows that he was in Wisconsin on business in no way connected with these banks, was called to Chicago by telegram and only learned upon his arrival of the seizure of the Park National, which meant, as he found some hours later, his temporary embarrassment and suspension. I submit that after excluding this evidence it was not proper for the court below in its opinion to indulge in inferences that while in Wisconsin on that and prior occasions he *might* or did set in train preparations for failure. There is no word in the record to warrant such inference, and it is contradicted by the evidence, the presumptions of the law, and the conduct of the man since the event.

He attempted to sue out a writ of *habeas corpus* in Chicago, but was defeated, so far as the Federal court was concerned, by being forcibly put into a carriage, driven by circuitous routes to Evanston, twelve miles from Chicago, and then hurried to Wisconsin.

In Wisconsin he was indicted for divers charges other than the one upon which he was extradited. He gave bail after some delays, and was afterwards surrendered and was in the custody of the authorities of Dodge county when this writ was sued out; indeed, under the decisions of the Supreme Court of the United States, while out on bail he was in custody in the eye of the law. (*Taylor* v. *Taintor* 16 *Wall.* 367.)

In brief the case presented is this:

The petitioner, a citizen of the State of Illinois, there

residing, is interested in a private banking partnership in the State of Wisconsin, which is managed by the resident partner and clerks. The partnership receives a deposit at four o'clock June 20, 1890. The petitioner was not there at the date of such receipt and knew nothing of it at the time (though this last is unimportant, as I contend).

He is surrendered upon requisition, and after such surrender is indicted for other offences alleged to have been committed prior thereto.

He maintains that he was not a *fugitive from justice* and that this fact prevents extradition, or if accomplished, as in this case, authorizes his release by a Federal court.

II.

SPECIFICATIONS OF ERROR.

1. The court below, by its judgment discharging the writ and remanding the petitioner to the custody of the authorities of the State of Wisconsin, violated the rights of the petitioner guaranteed him by article 4, section 2, of the Constitution of the United States.

2. And also the court below, by the same order and judgment, violated the rights of the petitioner guaranteed and reserved to him by articles VI and XIV of the amendments to the Constitution of the United States.

3. The warrant and proceedings under which the so-called rendition proceedings were had constituted no charge, and there was no finding by the Governor of Illinois that the petitioner was a fugitive from justice, and the court below therefore erred in holding the same valid and conclusive.

4. The court below erred in remanding the petitioner to the authorities of the State of Wisconsin, and violated

his rights under the sixth and fourteenth amendments to the Constitution of the United States, the said State authorities claiming the right to try him for other offences than the one for which his surrender had been procured.

5. The court below erred in refusing to permit the petitioner to testify that the Bank of Juneau would not have been compelled to suspend payments but for the failure of the Park National Bank of Chicago, the said evidence being competent as tending to show the absence of any thought of fleeing from the justice of or knowledge that he had violated the laws of Wisconsin.

III.

ARGUMENT.

The petitioner was not at the time of the commission of the alleged offence, the suing out of the requisition, and his arrest and rendition thereunder, a fugitive from justice.

It is conceded that he was not in Wisconsin at the time when the deposit of Herman Becker was received, but in the State of Illinois, the State of his citizenship.

The term is defined as follows:

"The fact that the alleged criminal was *in the State when the alleged crime was committed, at the time of the commission thereof*, and was found in the State upon which the requisition was made, shall be sufficient evidence, *in the absence of other proof*, that he was a fugitive from justice."

(Rule adopted by Interstate Extradition Conference of August, 1887, to which both Illinois and Wisconsin were parties.)

Hawley on Interstate Extradition, p. 119.

"*Fugitive from justice:* A person who, having committed crime, withdraws himself from the jurisdiction in which it was committed, without waiting to abide the legal consequences of the offence."

Century Dictionary, sub. Fugitive.

"Fugitive from justice (law): One who, having committed a crime in one jurisdiction, flees or escapes into another to avoid punishment."

Webster, sub. Fugitive.

"To be a fugitive from justice in the sense of the act of Congress regulating the subject under consideration, it is not necessary that the party charged should have left the State in which the crime is alleged to have been committed, after an indictment found, or for the purpose of avoiding a prosecution anticipated, or begun, but simply that, having *within a State committed* that which by its laws constitutes a crime, when he is sought to be subjected to its criminal process to answer for his offence, *he has left its jurisdiction* and is found within the territory of another." (*Roberts* v. *Reilly*, 116 U. S. 97.)

This Court also held that the fugitive was entitled under the act of Congress:

"*To insist upon proof that he was within the demanding State at the time he is alleged to have committed the crime charged, and subsequently* withdrew from her jurisdiction so that he could not be reached by her criminal process." (*Ex parte Reggel*, 114 U. S. 642–651.)

It was held in the following cases that actual personal presence in the demanding State at or after the commission of the crime is essential to make one a "fugitive from justice:" *Ex parte Joseph Smith*, 3 McLean (C. C.) 121; *Storey's case*, 3 C. L. J. 636; *Jones* v. *Leonard*, 50 Iowa, 106; *Wilcox* v. *Nolze*, 34 Ohio Stat. 520; *In re Mohr*, 73 Ala. 503; *Tennessee* v. *Jackson*, 36 Fed. Rep. 258; *Hart-*

man v. *Aveline*, 63 Ind. 344; Hawley, Inter-State Extradition, 36 and 108; Spear on the Law of Extradition, 499–500; *Id.*, 395–400; 2 Moore on Extradition, 937.

The Constitution provides:

"A person charged in any State with treason, felony or other crime, who shall flee from justice and be found in another State, shall, on demand of the executive authority *of the State from which he fled*, be delivered up to be removed to the State having jurisdiction of the crime." (Art. 4, sec. 2.)

The act of Congress provides:

"Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State or Territory *to which said person had fled*, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed *treason, felony, or other crime*, certified as authentic by the governor or chief magistrate of the State or Territory *from whence the person so charged has fled*, it shall be the duty of the executive authority of the State or Territory *to which such person has fled* to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within six months from the time of the arrest, the prisoner may be discharged. All costs or expenses incurred in the apprehending, securing, and transmitting such fugitive to the State or Territory making such demand, shall be paid by such State or Territory." (Sec. 5278.)

These plainly require:

1. That the accused should commit the crime in the demanding State.

2. Having committed the crime, he should flee from the State—

3. To the State where he is found.

There is in this language the necessary concept of change of location from one State to another. The doctrine of the respondent is that a person can be a fugitive from justice without any change of *situs* whatever.

The authorities above cited would seem to rest upon language too plain to admit of any other construction, and there is no respectable authority for any other so far as my examination goes.

IV.

Unless a fugitive from justice, such arrest and detention was without jurisdiction, unauthorized, and void, and contrary to the rights guaranteed the petitioner under the Constitution of the United States, and he should be released by this court on habeas corpus.

The Supreme Court of the United States recognizes that this is a personal right, and not alone a right of the State where the accused is found. In *ex parte Reggel* (114 U. S. 651) the court says:

"In other words, *the appellant was entitled under the act of Congress to insist upon proof that he was within the demanding State at the time he is alleged* to have committed the crime charged, and subsequently withdrew from her jurisdiction so that he could not be reached by her criminal process."

In the Rauscher case (119 U. S. 407) it is held that:

"The treaty, the acts of Congress, and the proceedings by which he was extradited *clothe him with the right to ex-*

emption from trial for any other offence until he has had an opportunity to return to the country from which he was taken for the purpose alone of trial for the offence specified in the demand for his surrender. The national honor also requires that good faith shall be kept with the country which surrendered him."

This is a distinct recognition of the right of the individual, who was not a citizen and had no constitutional guaranties, to raise the question.

The case of *Holmes* v. *Jennison* (14 Pet. 540), referred to in this opinion (p. 412), is also based upon the doctrine that there being no extradition treaty between the two governments there concerned, the accused had a right to appeal to the courts against a surrender by the State of Vermont. That State had indicated its willingness to make such surrender. It is there urged, as it is in the authorities lying at the foundation of the doctrine against which we contend, that only the surrendering State is concerned; that the accused has no immunity. The decision reached can be justified only by the broad doctrine that it is the right alike of every citizen or fugitive to insist that surrender shall be made only as prescribed in the Constitution.

The case of *The People* v. *Curtis* (50 N. Y. 321) is quoted approvingly (414), holding that an act of the legislature of that State authorizing the rendition to foreign States of fugitives from justice was in conflict with the Constitution of the United States. *This was at the suit of the accused.*

But it may be said that this decision was reached on the ground that the States are forbidden by the Constitution to enter into any treaty, alliance, or confederation. (Art. I, sec. 10.) It is difficult to see how the mere arrest and surrender of a fugitive, or a legislative direction to the

Governor to make such surrender upon specific conditions, can be considered a treaty which implies an agreement in advance between independent powers creating reciprocal obligations. But, however that may be, no lawyer would at this day, I submit, insist that under the Constitution the States are at liberty to enter into treaties, alliances, or confederations with each other. The Constitution prohibits this as much as such alliances with foreign nations. The one treaty by which the Government was founded exhausted the powers of the States in that direction, except only as the Constitution provides for its amendment.

The result is that there can be no extradition or interstate rendition except as authorized by the Constitution and laws of Congress. The States can do nothing except under that authority, and the citizen, or the fugitive, is exempt, unless his conduct has brought him within its terms.

No one would be rash enough to claim broadly that the Governor of Illinois could send any citizen of that State, demanded by the Governor of Wisconsin, to the latter State for trial, or that by any convention, treaty, or alliance between these two States such arrangements could be made; yet such is in effect the claim of the respondent when he asserts that Illinois alone can complain of Mr. Cook's unlawful extradition.

While, on the other hand, if such an action can only be taken under the conditions prescribed by the Constitution and laws of Congress, a case not within those conditions is beyond the jurisdiction of the Governors. It is idle to suppose that the law-makers were concerned with the forms of such extradition and intended to make it complete and conclusive if the affidavits and warrants were in due form, and cared nothing for the substantive

facts prescribed by the Constitution and act of Congress. These are jurisdictional. It requires no argument to demonstrate that it is not in conformity with our laws or the spirit of our Constitution to permit the citizen's liberty to be thus invaded and him taken to a foreign State because a ministerial officer, on *ex parte* affidavits, has decided these jurisdictional facts against him (which has not been done in this case, the warrant simply reciting that he, Cook, is "represented to be a fugitive from justice").

The writers are practically agreed that flight from justice is jurisdictional.

If jurisdictional, why should not the courts investigate upon *habeas corpus?* If a court with a jury were proceeding without jurisdiction, the right to so investigate could not be denied. The right is asserted to exist even after conviction in *ex parte Royall* (117 U. S. 241), a proceeding under an alleged unconstitutional act—that is, a proceeding without jurisdiction. If it exists as the right of the prisoner as against courts and juries, it certainly exists against the mere agent of the State or the Governor authorizing his act.

V.

The right to be released is as available after removal to the demanding State as before, if the conditions prescribed by the Constitution and laws of Congress did not exist at the date of the crime or extradition proceedings.

In argument the respondent was practically forced to admit that such right would exist and could have been enforced by Mr. Cook if he had applied to the courts in Illinois on that ground, and the court below so held (Record, 110). It is claimed that it was lost to him

when he was taken by this same agent under the same process across the imaginary line dividing the States of Illinois and Wisconsin. In other words, he is deprived of the right of personal liberty which he could claim from the Circuit Court of the United States, Seventh Circuit, when sitting in Illinois, when he petitions the same court sitting in Wisconsin. This right belonged to him in Illinois as a citizen of the United States living under constitutional safeguards. Are these safeguards dependent upon State lines? The right existed in Illinois because the laws of Congress had been violated. Has such violation been in any respect modified by removing the injured person across this dividing line between the two States?

But it is said that Wisconsin has since by its proper officers commenced proceedings against him and obtained jurisdiction over him. Wisconsin has no power by adversary or friendly proceedings to repair or restore the violated constitutional rights or broken laws of Congress. It is in the power of that State to release Mr. Cook from the effects of such violated laws; but the right to enforce them and protect individuals from their invasion is committed to the Federal judiciary. If, therefore, Mr. Cook had certain rights to liberty in Illinois under the Constitution and laws of Congress, no act of the State of Wisconsin can deprive him of them. I, therefore, insist that his rights must here be determined as in the first instance by the determination of the question whether or not he was subject to extradition under the Constitution and laws of Congress and the conceded facts of this case.

Indeed it is said to be settled that there can be no extradition from the United States except in conformity with the provisions of some treaty and statute passed to carry such treaty into effect, and equally that there can be no interstate rendition except as the same is authorized by the

Constitution and laws of the United States. (*Ex parte Morgan*, 20 Fed. Rep. 298.)

A man cannot flee from a State unless he is first within the borders of such State. The laws of Wisconsin have no extra-territorial force. In the absence of congressional action on the subject, a citizen of Wisconsin, even, might commit a crime against its laws and, escaping into Illinois, have immunity. The Constitution wisely provides against such result, and authorizes Congress to enact laws providing for the surrender of a person who flees from justice on the demand of the "executive authority of the *State from which he fled*."

Congress has attempted to carry this constitutional provision into effect, and enacted (sec. 5278 R. S.) that the copy of the indictment or affidavit charging the offence shall be certified "as authentic by the governor or chief magistrate of the *State or Territory from whence the person so charged has fled*," which is presented to "the executive authority of any *State or Territory to which such person has fled*, coupled with a demand for the surrender of such person as a fugitive from justice."

If, then, the petitioner was in Illinois when the deposit complained of was received and continuously until carried back under color of these requisition proceedings, he neither *fled from* Wisconsin nor *to* Illinois.

This seems too plain for extended argument. The conclusion seems to be that his arrest and detention was unauthorized and void.

It will not do to say that only the State of Illinois has a right to complain, and that if that sovereignty enters no protest, the person accused cannot do so. That would make the liberty of the individual dependent upon the caprice, the knowledge or lack of knowledge, the diligence or lack of diligence, of the executive, acting entirely upon *ex parte* affida-

vits, and without any opportunity on the part of the accused to be heard. It would be dangerous to the liberty of the citizen, if he could, without a moment's warning, be dragged from the State of his citizenship, from his neighbors, friends, and witnesses, and put upon trial in a distant land after months of imprisonment, because, forsooth, some nameless and irresponsible stranger filed an affidavit charging some crime or misdemeanor, before some perhaps equally irresponsible magistrate, and thereby succeeded in imposing upon the executive authorities of the two States. It may be said that he would give bail. How can he find bail among strangers and in a strange land? His friends may go to his relief. He may not have friends. Some of the greatest men known to history have lived friendless and alone; and whether great or small, known or unknown, endowed with the intellect of a Bacon or a Shakespeare, or as crazy as a March hare, he is the peer of every other man before the law, and his liberty as sacred; it is not the gift of the State, but his birthright, and for the protection or invasion of which he has a right, personal to himself, to appeal to the laws of his country. It may be said that he can defend in Wisconsin, and that this Court will presume that the courts of that State will do justice. Such a presumption can have no place in this controversy. Will the Court presume that the accused can procure the means of defence away from his home and among strangers? Has it not been a fixed and settled principle of the English law, "from the time whereof the memory of men runneth not to the contrary," that every freeman is entitled as of right to a trial by his peers taken from his hundred or vicinage? Has not this been wrested from unwilling monarchs as an ancient right? Is it not a personal right of the citizen, as well as a right of his sovereignty, to be asserted by it against any foreign power infring-

ing such right of its citizen? It is recognized as such by the Federal Constitution in guaranteeing to each citizen his life, *liberty*, and property, and forbidding any State to deprive him thereof "without due process of law." This does not mean simply a process regular and in due form upon its face, but law in its regular course of administration, recognizing the inherited rights under the common law, as well as the constitutional and statutory rights of the citizen.

"Due process of law" had its equivalent in "law of the land," found in the Great Charter.

Article VI, amendments to the Constitution, has established for every citizen of the United States this right to a trial by an impartial jury of the State and district wherein the crime shall have been committed * * * to have compulsory process for obtaining witnesses in his favor; and article III, sec. 2, provides that the trial of all crimes shall be held in the State where the said crime shall have been committed.

Judged by these standards, it is evident that the right to trial in the hundred or vicinage of the accused existing at common law is also a part of our fundamental law, and that the clause of the Constitution relating to extradition was not in any way intended to form an exception to the general principles of individual liberty and property recognized in every other part of the instrument.

As Judge Campbell said *In re* Frank Cannon (47 Mich. 481):

"We do not think the considerations involved in this inquiry have any special connection with State pride. The State of Michigan has no legal power to demand, and the State of Kansas has no legal power to deliver up, any persons but those charged as fugitive criminals. The constitutional safeguards on this subject concern the individual's

liberty, and no one holds his liberty subject to State comity or on any less tenure than constitutional right."

I therefore submit that there can be no constructive offence within this clause. Presence *in* the State and flight *from* it are jurisdictional.

And such is the conclusion of the Federal courts and many of the State courts which have had the question before them.

This Court has at least on two occasions waived the decision of the question whether or not the finding or recital of the Governor granting extradition in his warrant, that the accused is a fugitive, is conclusive upon the courts. (*Ex parte Reggel*, 114 U. S. 642; *Roberts* v. *Reilly*, 116 U. S. 80.

Of this, Mr. Hawley, in his work on "Inter-State Extradition," says:

"But it is not to be expected that such a conclusion will ever be arrived at. Facts are presented to the Governor through the medium of *ex parte* affidavits, made frequently as a matter of form, by irresponsible persons, at a long if not a safe distance from the place where the affidavits are to be used. Every one familiar with the ease with which such affidavits are procured and the carelessness with which they are sworn to will readily see that they form a very slender basis for the determination of any question of fact. They are sufficient where the fact is not disputed. But where the fact is disputed a formal recital of a finding based upon them cannot be held conclusive upon any sound principle. Under the principles not only of our law, but of every method of administering justice worthy to be called a system of law, there can be no such thing as a conclusive finding or adjudication of fact against a person, depriving him of valuable right, who has not been heard or had an opportunity of being heard. It is only in the courts of the State from which he is sought to be extradited that the accused can ever be heard upon this

question. For, as we shall see hereafter, he cannot raise the question of the regularity or legality of his extradition *in the State to which he is taken, upon his trial.*" [I insist that he can raise it at all times and under all conditions in the Federal courts where his constitutional rights are invaded.] "To say, therefore, that he cannot be heard upon this question before he is removed, is to say that a man can be deprived of a valuable right without any opportunity of being heard."

He further says: "If * * * it is made to appear that the accused is not a fugitive within the meaning of the Constitution, he should be discharged. And upon this question of fact he is entitled to a full hearing," citing, in support of this, *Jones* v. *Leonard*, 50 Iowa, 106; *Re Smith*, 3 McLean, 121; *Tenn.* v. *Jackson*, 36 Fed. Rep. 258; *Hartman* v. *Aveline*, 63 Ind. 344; *Wilcox* v. *Nolze*, 34 Ohio St. 520; *Re Mohr*, 73 Ala. 503.

Mr. Spear, in his learned work on the "Law of Extradition," says that there can be no such thing as constructive presence in a State, but that actual bodily presence is necessary to enable the Constitution and laws upon this subject to be applied. (Spear, 395–400.) To the same effect is 2 Moore on Extradition, p. 937.

He holds that flight from justice means a voluntary withdrawal from the State where the crime was committed, to the State where demanded, with the hope of detaching himself from the legal conseqences of his crime. He gives many instances of what would not constitute such flight. Spear, p. 399.)

He holds that the seizure of the petitioner can be inquired into by the court on *habeas corpus*, and that the prisoner will be released—

1. If no crime is charged (*Id.* 463–4.)
2. If upon hearing it appears that the accused was not

in fact a fugitive from justice. (Spear, 467, 482, 498, 499, 500.)

Mr. Wharton, Crim. Pl. and Pr., 8th ed., sec. 35, is quoted by Mr. Spear as follows: "The prisoner must have been a fugitive. If not, the Governor had no jurisdiction, and on proof that the prisoner was not a fugitive, and had not been in the State from which the requisition issues, there must be a discharge."

In Tennessee *v.* Jackson (36 F. R. 258) the same contention was made as to the right of the State of Tennessee to try Jackson, irrespective of the question whether or not he was in fact a fugitive from justice as is made in the case at bar. In that case the accused had received a letter at Chicago containing money which had been sent him by reason of his false and fraudulent statements. It was insisted that the mailing of the letter in Tennessee gave the authorities of that State jurisdiction. The court rejected this interpretation of the law, holding that to authorize extradition the accused must have been in fact a fugitive from justice and that there could be no such thing as constructive flight. The court also held that this question could be raised on *habeas corpus* in the Federal courts after the extradition was completed. The language used is so much in point that I quote at length:

"Jackson was not a fugitive. He had not in all his life been in Tennessee; had never fled from it, and his case did not fall within the positive terms of this law. The oath of the detective was false, and the Governors of the two States imposed upon. The whole proceeding was a fraud upon the law. If this arrest and imprisonment are to be maintained the opportunities for wrong and abuse of this law will be great and wide-spread. Commercial transactions are largely conducted by mail and by telegraph. If the seller at one end of the line, and the buyer at the other, with the aid of detectives, in cases of dispute

and controversy between them are to be allowed, under such proceedings as these, to have the citizens of one State carried to another State for trial under the false allegation that the person charged has fled, instances of oppression may not be few. It seems to me that the General Government cannot stand by and see its laws so trifled with and abused. It is well settled, as I understand it, that where treaties between this Government and a foreign nation provide for the extradition of persons charged with certain specific offences, and where extradition has been obtained upon the ground that such an offence has been committed, the person whose custody and return has been so obtained cannot, when brought in the jurisdiction of the court, be tried for a different offence, especially if it be not embraced in the terms of the treaty. Such a case is not altogether analogous to the one in hand, but it tends to show the good faith required between nations. Certainly the same character of faith should obtain between the executive authorities of the different States of this nation, which in many respects are foreign to each other. It seems to me that such authority should not be held to the seizure and removal of a citizen of its State when such seizure and removal were procured by fraud, falsehood, and imposition. It is ordered that the petitioner be discharged."

The principles of the *Rauscher* case, and in effect, it is insisted, the principles of *Tennessee* v. *Jackson*, have applied in the following cases: *In re Baruch* (41 F. R. 472, 473, 474), holding that the prisoner was entitled to immunity from arrest until he was returned to the place of asylum, and that it was competent for the Federal court to direct the marshal to convey him to such place. It was here, also, held to be a right of the person accused.

In re Fitton (45 F. R. 471), where it was held that the States are independent nations as between each other, except as to powers conferred upon a general government, and that the prisoner could only be tried for the crime for

which the demand was made; that he had the right to return upon acquittal of the charge for which he was extradited, and that there was no merit in the suggestion that he should be made to await the action of the State court, but, on the contrary, he should be discharged from custody. In *Tennessee* v. *Jackson*, *supra*, as we have seen, this fact—the States, with reference to this subject, are to be deemed independent nations—was recognized.

Prof. Spear, in his learned work on the Law of Extradition, a work which was said by this Court *In re Rauscher* to be "so full and careful that it leaves nothing to be desired in the way of presentation of authorities," gives it as his opinion, that when a State has by improper rendition proceedings obtained the custody of a party, that fact should be available for his defence and release after he has been surrendered.

Spear on the Law of Extradition, 540 *et seq.*

VI.

The warrant and proceedings under which the so-called rendition proceedings were had constituted no charge and there was no finding by the Governor of Illinois that the petitioner was a fugitive from justice.

The warrant only says that "Charles E. Cook is represented to be a fugitive from justice," and there has been laid before him (the Governor) a copy of an affidavit charging Cook with having committed against the laws of the said State of Wisconsin the crime of illegal banking.

This precise question, so far as the first objection is concerned, has been passed upon by Judge Withey in Jackson's case (2 Flip, 183. *Vide* Spear on Extradition, p. 466).

With reference to the second objection, to wit, that he does not find as a fact that the said Cook stands charged

with any crime, but only finds that he has a copy of an affidavit made before a magistrate (not an indictment), charging him with such a crime, I call attention to *People ex rel. Lawrence* v. *Brady*, 56 N. Y. 182 (Spear, 470–473), where it is held that "the fact that an inferior magistrate of the State of Michigan had issued a warrant of arrest upon the same proof did not justify the inference that a legal crime was charged in the affidavits."

This is upon the ground that there is a wide difference between an indictment and a warrant based upon a mere affidavit before a magistrate—a difference recognized and commented on in Spear on Extradition, etc., p. 480. To the same effect is Hawley, Interstate Extradition, pp. 32–3.

VII.

It is not competent for the authorities of a State to procure the surrender of a person upon one charge of crime and while holding him on this charge procure his indictment and put him upon trial upon other charges.

The court below rendered no opinion on this branch of the case. (Record, p. 116.)

It is submitted, however, that it should have done so, and that in effect the action taken was prejudicial to the appellant in that it permitted the State authorities to detain the petitioner in custody in the event of his acquittal upon the charge for which he was extradited, and put him upon trial, as is stated in the opinion (Record, 105), upon the seven indictments "for other and different violations of the criminal laws of the State of Wisconsin," simply reserving to him the right to apply to the Federal courts if his right be thereby invaded. (Record, 117.)

In behalf of appellant it is insisted that the extradition was without jurisdiction and therefore void, and therefore

the appellant had at the hearing a present right to return to the State of domicile both as against the original warrant and the subsequent ones set out in the return by the sheriff of Dodge county.

I therefore venture to argue the questions raised by this part of the return.

This involves the question whether a person extradited from one State of the Union to another, on the charge of the commission of a specific crime, can be held by the courts of the extraditing State for other and different crimes, and be detained by the latter State for prosecution, notwithstanding it may appear that the arrest under the rendition proceedings was without legal authority. It will be conceded that these indictments are for acts done before June 20, 1890, the date of the offence for which the petitioner was surrendered. It will also be conceded that Mr. Cook has not voluntarily been in Wisconsin since that time; that the only custody and control of his person was obtained by these proceedings, and such as has been obtained since that time while he was held thereunder. I admit he has been out on bail, but that it is a continuance of the original imprisonment in the eye of the law. (*Taylor* v. *Taintor*, 16 Wall. 371.)

I am aware that there has been a diversity of opinion upon this subject which is now happily put at rest, so far as extradition between nations is concerned. It cannot be logically maintained, as it seems to me, that a different rule should be adopted as between States than is now settled in international cases.

It would be idle for me to enter upon any argument of a question which in 1876, in Winslow's case, was the subject of extended discussions between our Government and Great Britain, in which it was claimed by England (Lord Derby) that the extradited person could only be tried for

the offence named, while our Government, through Mr. Fish, then Secretary of State, maintained that where the fugitive had been *legally brought into our jurisdiction* he could be held for any crime he may have committed previous to his extradition, whether named in the treaty of extradition or not.

This correspondence led to much discussion through the various law journals of the country, in which the leading publicists of our time participated. Messrs. Wm. Beach Lawrence, Judge Lowell, David Dudley Field, Mr. Wells, the author of Wells on Jurisdiction, Professor Spear, Doctor Wharton—all unite in support of England's position.

This question was put at rest by the decision of this Court in the Rauscher case (119 U. S. 407). This opinion is based upon reasoning equally applicable to interstate rendition. The Court says:

" Upon a review of these decisions of the Federal and State courts, to which may be added the opinions of the distinguished writers which we have cited in the earlier part of this opinion, we feel authorized to state that the weight of authority and of sound principle are in favor of the proposition that a person who has been brought within the jurisdiction of the court by virtue of proceedings under an extradition treaty can only be tried for one of the offences described in that treaty, *and for the offence with which he is charged in the proceedings for his extradition*, until a reasonable time and opportunity have been given him, after his release or trial upon such charge, to return to the country from whose asylum he had been forcibly taken under those proceedings.

" Two other observations remain to be made. One of these is that the operation of this principle of the recognition of the *right of prisoners* under such circumstances by the courts before whom they are brought for trial, relieves the relations between the executive department of

the United States Government and the courts of a State before whom such case may be pending, of a tension which has more than once become very delicate and very troublesome."

If it is important that good faith shall be observed between nations, it is more important between States; forming members of one family, without power of war or reprisal, each State is, by reason of the surrender of these powers to the General Government, a limited sovereignty. It is important that neither by armed invasion nor false pretences shall the citizens of one State suffer at the hands of any other State. The utmost good faith and respect for mutual rights is necessary if that harmony between these several States, often harassed by conflicting interests, is to be preserved. It thus becomes a question of national importance and touching the very foundation of our national life. Very small disputes have led to complications which have required armies of men and millions of treasure for their settlement.

But I prefer to discuss it as a question of individual right, of personal liberty. It is submitted that the question is one in which the accused has vested constitutional rights, and that it is a shallow view to suppose that it can be a matter of interest only to the two sovereignties engaged in the negotiations looking to surrender. It is the birthright of every freeman, born in a country where the common law prevails, when accused of crime, to have specific information touching the nature of the accusation, together with the names of the witnesses. This right is now found in the constitution or statutes of nearly every State and in the Constitution of the United States, but it existed before these, and *they* are only declaratory. We have seen that coupled with this was also the common-law

right, and here also the constitutional right, to be tried by a jury of the hundred or vicinage.

Is it to be supposed that the makers of our Federal Constitution, who provided that every accused person should "be informed of the nature and cause of the accusation" and "be confronted with the witnesses against him" (article VI, amendments), intended by article IV, section 2, to limit and abridge this right?

That is the logic of those who assert that a fugitive surrendered upon an indictment describing one crime may after such surrender be put upon trial for another and a different crime. Their construction in effect makes the sixth amendment to the Constitution read as follows: "In all criminal prosecutions, except where a person has been surrendered as a fugitive from justice, and as such removed to the State having jurisdiction of the crime, the accused shall enjoy the right to a speedy and public trial" * * * "and to be informed of the nature and cause of the accusation and to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor and to have the assistance of counsel in his defence. Removal may take place on *ex parte* affidavits without investigation and trial, and when accomplished cannot be the subject of investigation by any court. After removal as a fugitive from justice this Constitution does not apply."

Such logic assumes that the language of section 2, article 4, "a person charged in any State with" * * * "crime shall, on demand of the executive authority," * * * "be delivered up, to be removed to the State having jurisdiction of *the crime*," means *any crime;* that one may be used as a charge as well as another; its object is accomplished if it procures the removal. Good faith between States is nothing; the accused *at home* is entitled to know the nature and cause of the accusation,

be confronted with witnesses against him, having compulsory process for his own witnesses and counsel for his defence, while if dragged away from home and friends he is entitled to none of these. What at home was his birthright, guaranteed by the Constitution of his country, becomes, when torn from these ties, of no concern to him but only to his State, which is powerless to aid him, stripped as it is of those means by which a nation usually redresses the invasion of the rights of its citizen.

This logic also requires me to suppose that the act of Congress (sec. 5278) requiring the production "of a copy of *the indictment found* or of an *affidavit charging the crime*" is of no importance, and having fulfilled its purpose by securing the removal, is *functus officio*.

On the contrary, I insist that the rights guaranteed by article VI are more important to the citizen surrendered to a distant jurisdiction than at home; that while the State of Illinois is powerless to aid the petitioner now held beyond her jurisdiction, the Government of the United States, to which that State surrendered her power of reprisal and of declaring war, can, through its courts, afford to the petitioner that relief which shall at once give him liberty and return to Illinois her citizen.

I am aware that the supreme court of Wisconsin holds a view opposed to the one I am now urging. (*State v. Stewart*, 60 Wis. 587.) It is sufficient to say of this decision that it is in conflict with the best and highest authority, and is largely based upon decisions which the Supreme Court of the United States expressly declined to follow in the Rauscher case. The decision rests upon a false assumption—in my judgment, one of the most startling ones I have ever discovered in judicial reasoning. The court says (p. 591):

"The interstate extradition clause of the Constitution was never intended for the benefit of fugitives, nor to enable them to escape just punishment for their offences." * * * "It was in effect a pledge from every State to each of the others incorporated into the organic law of the nation that it would become, to a certain extent, an agency in the administration of the laws of every other State against treason, felony, or other crime, *as to all such criminals as should come within its borders.*"

This assumption is that the accused is a criminal simply because he has been surrendered or is charged with crime. Our boasted common law, as well as our Constitution and statutes, have taught us to assume him to be innocent, unjustly accused, until the contrary is proven beyond a reasonable doubt.

It was insisted upon argument below, and the opinion of the court below seems to adopt that view, that for the purposes of a hearing upon *habeas corpus* Mr. Cook must be presumed to be guilty. I insist that there is no room for such a presumption, and that in American jurisprudence there is no time, prior to hearing, when as against liberty the presumption of guilt prevails. In a proceeding of this character there is no necessity for and can be no investigation of guilt or innocence. The facts of a crime charged and flight from the justice of the State whose laws have been violated are jurisdictional, and when the sheriff or other authority is challenged by the writ of *habeas corpus* to show the cause of detention he must show all these facts, but there is in these no connection with or call for a presumption concerning guilt or innocence. On the contrary it was held in *Ex parte Morgan* (20 Fed. Rep. 298, p. 307) that—

"This law" (extradition) "is one in restraint of liberty and therefore to be strictly construed and strictly pur-

sued." * * * "The act of Congress provides for a method that is summary in its effect, and it must therefore be strictly complied with." * * * "Suspicion does not warrant the arrest of a party, that he may be sent from a State where he may be found to another and it may be a distant State. *All legal intendments in a case of this kind are to avail the prisoner.* (*Ex parte Smith* 3 McLean, 126.)"

It is a matter of surprise to me that any lawyer could be found to assert either the proposition of presumed guilt or the absence of right of the prisoner to complain of illegal extradition. If the State alone is concerned, the writ of *habeas corpus* could never be used in extradition proceedings. There is no occasion for its use until the governor has decided to grant the writ and the arrest is made; and according to these gentlemen his decision is conclusive of the intention of the State to waive its rights. If waived after the prisoner is beyond the State line, they are before, and there can be no writ. The same is true of the presumption of guilt. Both leave the individual at the mercy of an enemy, who by false affidavits may succeed in imposing on the governor of a State. I prefer to believe that the liberty of the American citizen is held by no such insecure tenure, and that the writ of *habeas corpus*, so jealously guarded in our fundamental law, protects these liberties against every invasion of unlicensed power; and hence, if the authorities of Wisconsin in whose behalf and name Mr. Cook was extradited, are unable, in answer to this writ, to show the license for his taking found in the combined facts of crime charged and flight from justice, he is entitled in this proceeding, in his own substantive right, to his release.

In quoting the Rauscher case, *supra*, I asserted that it was decided upon lines which coincide with our position in

this case. There was no treaty between the United States and England forbidding such trial. The treaty did enumerate the offences for which extradition could be had, and the court held that such enumeration was equivalent to the exclusion of the right to try for other offences; that he could only be tried "for the offence with which he is charged in the proceedings for his extradition, until a reasonable time and opportunity have been given him, after his release or trial upon such charge to return to the country from whose asylum he had been forcibly taken under those proceedings."

The treaty was the law of the land just as the act of Congress providing that a copy of the indictment or affidavit charging *the crime* shall accompany the requisition papers is the law of the land—no more, no less.

If the inclusion of the crimes in one excludes all others, the inclusion of the affidavit charging the crime excludes all others.

If the accused has substantial rights which he is entitled to protect in one case through the courts, he must have in the other. It cannot be supposed that our law-making power, or this Court, was more solicitous to protect the rights of a foreigner accused of a crime, than the rights of an American citizen.

In this discussion I have not quoted at length from the authorities, assuming that the Court would desire to read these from the works of the authors or the decisions referred to.

Judges Cooley and Lowell, Professor Spear and William Beach Lawrence, as well as every Federal circuit and district court, expressing an opinion since the Rauscher case, have asserted this immunity from trial for every other offence than the one named in the rendition proceedings as applied to interstate rendition.

Opposed to this view is Mr. Moore alone, and Mr. Hawley, who contents himself with quotations from the Wisconsin decision on one side and the Michigan on the other. The overwhelming weight of authority is, as I submit, in favor of the rule stated and the recognition of the right of the prisoner to raise the question at any time.

Quoting from Mr. Lawrence:

"The fiction according to which for every fact foreign to the extradition he is still in the territory of the country of refuge must be completely respected," or the extradition proceedings will become in fact what this learned author asserts them to be when he says: "The system of extradition as it now exists in this country is entirely incompatible with the principles of the common law, whether applied to citizens or to the case of those who only owe to us a temporary allegiance, and that it is also inconsistent with the guaranties afforded as well by the bills of rights incorporated into the organic law of all the States of the Union as by the Constitution of the United States, as construed by the early statesmen and publicists of our country." (15 Alb. L. J. 228.)

VIII.

The court erred in excluding the testimony of Mr. Cook to the effect that the Bank of Juneau would not have been compelled to suspend but for the failure of the Park National Bank.

I have sufficiently commented on this action of the court in the statement of facts. To decline to receive testimony on this point and at the same time indulge in presumptions that the petitioner probably knew of the impending failure and directed the receipt of the Herman Becker deposit is not only contrary to the evidence, but, as is

confidently submitted, does violence to every principle of our law for the protection of personal liberty.

It is enough to say that Mr. Cook was not extradited for *conspiring to receive, or inducing people to deposit money in his bank*, but for the actual receipt of this specific deposit of Herman Becker. The Court cannot, therefore, give any weight to this suspicion or suggestion, unwarranted alike by any rule of law or shadow of fact, unless prepared to hold that extradition between States is governed by no rules of good faith, and that any pretence is sufficient, *if it is successful*, and that the citizen, if accused of crime, has no rights which the Court is bound to respect.

IX.

I have not here discussed the *Ker* case (119 U. S. 436) and *Mahon* v. *Justice* (127 U. S. 700)—cases of kidnapping by third parties, by means of which the accused were brought within the jurisdictions seeking to put them to trial.

The State had not, as here, acted under legal process or been in any way a party to the proceedings. Those were cases of tort for which the injured parties could sue the tort feasors. *The private wrong was held not to divest the public right.* Here the action is under and by virtue of an act of Congress; hence the party can ask this Court to inquire if the power thus invoked was properly exercised. Here the State was a party to the procedings by which he is brought within its jurisdiction and asked therefor on the ground that he was a fugitive from its justice and for the commission of a specific crime. He was not such a fugitive as is insisted, and hence the usual rules should apply as between parties where one is brought into

or induced to come within the jurisdiction by the fraud or trick of another. The party guilty of such fraud or stratagem cannot profit thereby, whatever may be the rights of third parties no way concerned therein. And in addition to this are the considerations of want of jurisdiction under the Constitution and acts of Congress, which I have urged.

It is respectfully submitted that any other view than the one here urged strips the citizen of the most precious safeguards of the Constitution—his liberty has no secure tenure—without a moment's warning he may be seized under a writ, regular upon its face, and hurried across a State line. The persons doing this are protected by the writ. Away from home and friends, stripped of the right of compulsory attendance of witnesses, he is, or may be, at the mercy of his enemy. It will not do to say that magistrates will exercise care in issuing warrants, and district attorneys in making their certificates. The abuses of the "peoples' courts," as these magistrates are called, is known to all, and is famous in story. The power of the prosecutor has often been exerted to convict innocent men. Governors have wreaked their spite on the citizen, and even sought to take away the liberties of a people. These constitutional guaranties recognize the weakness of human nature, and therefore rest upon no such feeble presumptions. They are absolute in character, may be appealed to by any citizen, however humble, and, as this Court has said, "*clothe him*" about. Let this Court once establish the doctrine of constructive presence in the demanding State, and it will be the ordinary instrument of the collection lawyer, and any citizen may be awakened at night with a summons to a distant State to answer a charge of obtaining goods under false pretences, or a similar charge. And if the doctrine is also established that as between States any pretence is

sufficient, and the accused may be put on trial for other and different offences, it is submitted that little is left to the citizen under the clauses of the Constitution referred to.

I confidently submit that the judgment of the court below should be reversed.

CHARLES H. ALDRICH,
For Appellant.

146 U.S. 1893

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JAMES H. McKENNEY
CLERK

RECORD, CASE No. 15,988

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1892.

CHARLES E. COOK, APPELLANT,

vs.

COLDEN A. HART, SHERIFF OF DODGE COUNTY, WISCONSIN.

TERM No., 1067.

Appeal from the Circuit Court of the United States for the Eastern District of Wisconsin.

BRIEF FOR APPELLEE.

W. C. WILLIAMS and
P. G. LEWIS,
Attorneys for Appellee.

FILED OCTOBER 31, 1892.

sufficient, and the accused may be put on trial for other and different offences, it is submitted that little is left to the citizen under the clauses of the Constitution referred to.

I confidently submit that the judgment of the court below should be reversed.

CHARLES H. ALDRICH.
For Appellant.

146 U.S. 183

Office Supreme Court U. S.
FILED.
OCT 31 1892
JAMES H. McKENNEY,
CLERK.

RECORD, CASE No. 18,083.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1892.

CHARLES E. COOK, APPELLANT,

vs.

COLDEN A. HART, SHERIFF OF DODGE COUNTY, WISCONSIN.

} TERM No., 1067.

Appeal from the Circuit Court of the United States for the Eastern District of Wisconsin.

BRIEF FOR APPELLEE.

W. C. WILLIAMS and
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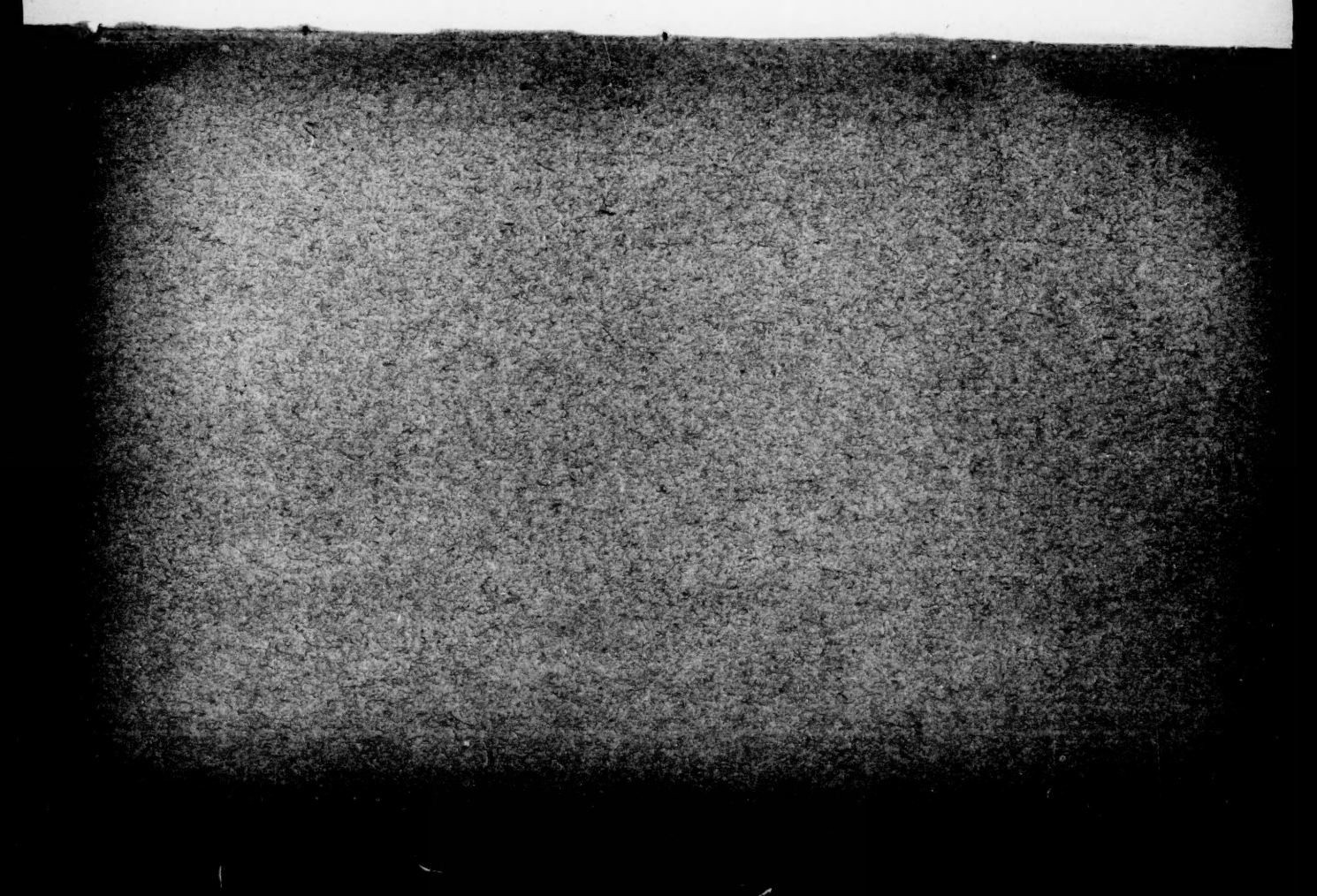
FILED OCTOBER 31, 1892.



RECORD, CASE No. 15,037.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

Term No., 1067.

CHARLES E. COOK, APPELLANT,

vs.

COLDEN A. HART, SHERIFF OF DODGE COUNTY, WISCONSIN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN.

BRIEF FOR APPELLEE.

STATEMENT OF CASE.

This is an appeal by Charles E. Cook, petitioner, in *habeas corpus* proceedings from the judgment of the United States circuit court for the eastern district of Wisconsin, made upon the hearing of a writ of *habeas corpus* sued out in said court, upon his petition to discharge him from the custody of the

State courts of Wisconsin, which judgment was entered dismissing said writ and remanding said Cook to the custody of said State courts of Wisconsin, and the following statement of facts, substantially as contained in the opinion of the United States circuit court herein, is doubtless sufficient for all purposes of this appeal.

On the 13th of February, 1892, upon the petition of Charles E. Cook, claiming to be restrained of his liberty by one Colden A. Hart, sheriff of the county of Dodge, State of Wisconsin, a writ of *habeas corpus* was issued out of this court, to which the sheriff made due return, which the petitioner duly traversed. The facts disclosed by the record, so far as essential to the determination of the matter, are substantially these:

On the 5th day of March, 1891, one George W. Morse complained to a justice of the peace of the county of Dodge that the petitioner, Charles E. Cook, and one Frank Leek, on the 7th of May, 1889, opened a bank at Juneau, in the county of Dodge, styled the "Bank of Juneau," and entered upon and engaged in a general banking business, having a pretended capital of $10,000, and continued in such business, soliciting and receiving deposits up to and including the 20th day of June, 1890, upon which day the bank closed its doors and failed; that Cook was the principal owner of such bank, owning nine-tenths interest therein, Leek owning one-tenth interest therein; that Cook was an officer of the bank, and had the general supervision of the business, which was transacted either by him personally, or under his order and direction, by one Richardson, acting as his agent; that from January 6, 1890, to June 20, 1890, Cook, by the inducements and pretenses so held out by him, re-

ceived and accepted on deposit, from citizens of the county, money to the amount of $25,000; that this was done by the express order and direction of Cook, and with his full knowledge, and that no part of said amount has been paid or returned to the depositors; that on the 6th day of January, 1890, Cook and Leek and the bank were severally insolvent, and have since so continued, and that such insolvency of the parties and of the bank was well known to Cook on and ever since the 6th day of January, 1890, and that, at the time of receiving all the deposits stated, Cook knew and had good reason to know that he and Leek and the said bank were each and all of them unsafe and insolvent; that on the 20th of June, 1890, at Juneau, in the county of Dodge, Cook, as such banker, did accept and receive a deposit in said Bank of Juneau from one Herman Becker, a resident of the county of Dodge, of $175, which has never been paid or returned, and that at the time of receiving such deposit Cook knew and had good reason to know that he and the said Frank Leek and the said Bank of Juneau were each and all of them unsafe and insolvent, and that such deposit from Becker and all the other deposits mentioned were received by Cook with intent to cheat and defraud, contrary to the statute of Wisconsin. Thereupon the justice of the peace to whom the affidavit and complaint had been presented issued the usual warrant for the arrest of Cook, upon which, accompanied with several affidavits in support of the principal charge and also upon an affidavit of the then sheriff of the county of Dodge, who states certain ineffectual attempts to find Cook in the city of Chicago and who states "that he knows that said Charles E. Cook was at said times and now is a fugitive from justice," and also upon the appli-

cation of the district attorney for the county of Dodge, who states that "said Charles E. Cook is a fugitive from justice and has fled from the justice of the State of Wisconsin and avoided arrest," the governor of the State of Wisconsin, on the 9th day of March, 1891, issued his requisition upon the governor of the State of Illinois, requiring the apprehension of the said Cook and his delivery to an agent deputed to receive and convey him to the State of Wisconsin. That requisition was honored by the executive of the State of Illinois, who issued his warrant on the 10th day of March, 1891, to the proper peace officers of that State, reciting that the executive authority of the State of Wisconsin had demanded the apprehension and delivery of Charles E. Cook, "represented to be a fugitive from justice," and had produced and laid before him authenticated copies of the charge hereinbefore recited and requiring the officers to whom the warrant was addressed to arrest and secure the said fugitive, Charles E. Cook, if to be found within the limits of the State, and to deliver him into the custody of the agent of the executive authority of the State of Wisconsin appointed to receive the said fugitive.

Cook was arrested under such warrant by the sheriff of Cook county, Illinois, on the 11th day of March, 1891, and on the same day, and while still in the custody of said sheriff, he procured a writ of *habeas corpus* from the circuit court of Cook county to test the legality of such arrest; which writ was duly served upon said sheriff, and he thereupon made return thereto, and, after a full hearing and much delay, the said court, on the 6th day of June, 1891, determined that said arrest was legal and remanded said Cook to the custody of said sheriff, and he was thereupon

delivered to said Colden A. Hart, as agent as aforesaid, and conveyed to the State of Wisconsin, where he was examined before the magistrate issuing the warrant, and, on the 8th day of June, 1891, was held to answer to said charge; and he thereupon gave bail for his appearance at the next term of the circuit court of said county of Dodge, to wit, the September, 1891, term of said court, during which term the district attorney of said Dodge county filed an information against said Cook, charging him with the offense set out in the original complaint.

Cook appeared at said term, and upon his application the trial upon such information was continued to the term of said court beginning on the second Tuesday of February, 1892; and he thereupon gave bail for his appearance at such term. On the 12th day of February, 1892, during that term of said court, Cook appeared in open court and surrendered to the sheriff of Dodge county, Colden A. Hart; and thereupon his bail bond was cancelled and the sureties thereon discharged and he was remanded to the custody of said sheriff by the order of said circuit court. Thereafter, on the 13th day of February, 1892, Cook was arraigned in said court upon said information and pleaded not guilty thereto, and his trial was begun, and while proceedings were being had therein, on the 15th day of February, 1892, Cook caused a writ of *habeas corpus*, issued by the circuit court of the United States for the eastern district of Wisconsin, to be served upon the said sheriff of Dodge county, the respondent herein, commanding him to make return thereto at two o'clock on that day, said Cook claiming in his petition for said writ that his extradition from Illinois to Wisconsin was in violation of the Constitution of the United States.

As stated by the circuit court:

"At the February term, 1891, of the circuit court of Dodge county, the grand jury of the county presented seven indictments against the petitioner, Cook, charging him with different violations of the criminal laws of the State of Wisconsin, some for larceny, some for embezzlement, and some for receiving deposits in the bank, knowing the bank to be unsafe and insolvent. All these offenses are charged to have been committed in connection with this business of banking; the times of the alleged offenses varying, but all charged to have been committed between the 3d and 20th days of June, 1890. To the several indictments Cook was required to plead, and under them he was held to bail, and subsequently, and before this writ of *habeas corpus*, by his bail surrendered to the sheriff, in whose custody he was at the time of the issuance of the writ. The sheriff justifies his detention of Cook under the writs issued upon the information and the several indictments stated."

It was established on the hearing before the United States circuit court that Cook, while residing in Chicago, came to Juneau, Wisconsin, and personally superintended the opening and setting in operation of said bank; that he personally hired and discharged all employés of the bank while it existed; that he frequently and continually during its existence was personally in Juneau every few weeks looking after and giving orders and directions for the conduct of said banking business; that while there he repeatedly solicited deposits in person and directed his employés to solicit deposits in said bank, and in fact that everything done by the cashier or employés in said banking business was done by them under Mr. Cook's directions and orders, and that while he was not in the bank at the exact time of the receipt of the deposit in question, he was in the county on that day and had been in Juneau shortly before, and was then in control and direction of said bank the same as at all previous times.

The Wisconsin statute under which said complaint was made and information filed is section numbered 4541, and is as follows:

"SECTION 4541. Any officer, director, stockholder, cashier, teller, manager, messenger, clerk, or agent of any bank, banking, exchange, brokerage, or deposit company, corporation, or institution, or of any person, company, or corporation engaged in whole or in part in banking, brokerage, exchange, or deposit business in any way, or any person engaged in such business in whole or in part, who shall accept or receive on deposit, or for safe keeping, or to loan, from any person, any money, or any bills, notes, or other paper circulating as money, or any notes, drafts, bills of exchange, bank checks, or other commercial paper for safe keeping or for collection, when he knows or has good reason to know that such bank company or corporation, or that such person is unsafe or insolvent, shall be punished by imprisonment in the State prison not more than ten years nor less than one year, or by fine not exceeding ten thousand dollars."

On appeal to this Court said Cook assigned as error in the order and proceedings of the circuit court "that the said circuit court of the United States erred in refusing to grant the petition of your petitioner and to discharge him as therein prayed." (Record, p. 102.)

In passing, we may be permitted to emphatically dissent from the "suggestions of facts occurring since the trial" as contained in appellant's brief, page 2, and to assert strongly that there are no "statements made" or "inferences indulged in by the court below not based upon the record," and certainly nothing which requires this Court to consider extraneous or subsequent matters, which would only open the region of contested facts directly bearing upon the guilt or innocence of the accused; all of which, in whatever guise it is

we submit it was a palpable and total failure, and the writ must be discharged and appellant remanded to the custody of the State officers.

The principle here invoked has been announced so often that we will not attempt to cite all the cases, but the doctrine and principle appear in—

Ex parte Royall, 117 U. S., 241, 247, 253.
Church on *Habeas Corpus*, secs. 69, 70.
Ex parte Skiles, 50 Fed. Rep., 524.
Ex parte Dorr, 3 How., 103.
Ex parte Ullrich, 43 Fed. Rep., 661.

Closely allied to this, as indeed it is involved in it, is the well-known and thoroughly established principle of law that a man cannot set up as a defense in a criminal cause the manner by which he is brought within the jurisdiction of the court.

Ker *vs.* Illinois, 119 U. S., 436, 442, 444.
State *vs.* Brewster, 7 Vermont, 118.
Dow's case, 18 Penn. St., 37.
In re Miles, 52 Vermont, 609.
Mahon *vs.* Justice, 127 U. S., 707–712.
In re Mahon, 34 Fed. Rep., 525, 528–531.

The full scope of the constitutional provision and of the words "other crime" is discussed in—

Kentucky *vs.* Dennison, 24 How. U. S., 66–104–109.

Again affirmed in—

Ex parte Reggel, 114 U. S., 642. 650–'3.
Brown's case, 112 Mass., 409.
Taylor *vs.* Tainter, 16 Wallace, 370.
In re Voorhees, 32 N. J. L., 145.
In re Felter, 3 Zabriskie, 31.
Johnston *vs.* Riley, 13 Georgia, 133–135.
In re Clarke, 9 Wend., 212.
Morton *vs.* Skinner, 48 Ind., 123.
Wilcox *vs.* Nolze, 34 Ohio St., 522.
In re Hooper, 52 Wis., 699.

The question of whether an act is a crime is very often one of the questions to be tried and determined in the case, and it can only be finally and conclusively determined in the courts of the demanding State. The accusation on which requisition is based will not be scrutinized with technical accuracy. If it charges a crime substantially the determination of its technical sufficiency must be left to the courts of the demanding State.

Tullis *vs.* Fleming, 69 Ind., 15.
State *vs.* O'Connor, 36 N. W. Rep., 462.
Re Roberts, 24 Fed. Rep., 132.
Re Voorhees, 32 N. J. L., 141.
Roberts *vs.* Reilly, 116 U. S., 80, pp. 92–97.
People *vs.* Byrnes, 33 Hun., 99.
Davis case, 122 Mass., 328.
In re Keller, 36 Fed. Rep., 682–687.

It is held that the governor's certificate provided for in section 5278, Revised Statutes United States, is legal and

conclusive evidence of the fact that the *fugitive is legally accused in the home jurisdiction*, and the courts will not go behind it.

In re Leary, 10 Benedict, 197.
Re Manchester, 5 Cal., 237.
Kingsbury's case, 106 Mass., 223.
Ex parte Thornton, 9 Tex., 635.
State *vs.* Richardson, 34 Minn., 115.
Hibler *vs.* State, 43 Tex., 197.

Briefly, then, we fail utterly to see how any rights of the petitioner and appellant here have been violated, as claimed in the first and the second and third specifications of error set out out in appellant's brief, page 7.

It would appear to be a work of supererogation for us to attempt to reiterate or attempt to elaborate upon the argumentative and exhaustive discussion of these questions so tersely, ably, and convincingly set out in the opinion of the circuit court in this case (Record, pp. 104–117, inclusive). We prefer, with the permission of this Court, to refer to such opinion as fully and freely as if it were incorporated bodily in this brief and thus preserve its full force and effect undiluted and not weakened by any attempt of ours to cover the same ground. We believe it impregnable and not weakened or overthrown in any respect by the skillful argument in behalf of appellant upon the same questions.

Upon the subject of what constitutes a fugitive from justice and kindred topics we find a very full history and discussion in 2 Moore Extradition, pp. 887–929, and this case comes clearly within the principle of Roberts *vs.* Reilly, where this Court say: "The appellant in his affidavit does

not deny that he was in the State of New York about the date of the day laid in the indictment, when the offense is alleged to have been committed, and states by way of inference only that he was not in that State on that very day." How much more forcibly does this apply to the case at bar!

In reference to the declaration that flight from justice is jurisdictional in the sense claimed, and the right to be released is as available after removal as before, we shall simply say that in our opinion the claims made for appellant are wholly untenable and unsupported by the weight of authority.

The decision of the question whether the finding of the governor, in his recital granting extradition in his warrant, that the accused is a fugitive is conclusive upon the courts has been waived by this Court in both the Reggel case and in Roberts *vs.* Reilly (*supra*); but how can it be said to avail him otherwise than in a proceeding before removal and before the jurisdiction of his person has been acquired by the demanding State, and while the question is still open, either before the governor or the courts of the State from which he is sought to be taken, as to whether he should be delivered up and whether all the requirements of law have been complied with so as to make it the *duty* of the governor and courts to give effect to the warrant of surrender?

On this subject Mr. Hawley in his work, pages 42–43, says: "It is only in the courts of the State from which he is sought to be extradited that the accused can ever be heard upon this question; for, as we shall see hereafter, he cannot raise the question of the regularity or legality of his extradition in the State to which he is taken upon his trial."

In Ker *vs.* Illinois, 119 U. S., 436, Mr. Justice Miller says in reference to such an objection and in recognition of the principle contended for: "The case does not stand when the party is in court and required to plead to an indictment as it would have stood upon a writ of *habeas corpus* in California or in any States through which he was carried in the progress of his extradition to test the authority by which he was held."

If appellant's contention is sound and the facts upon which requisition is based are jurisdictional, the question can be raised anywhere and at any time, and any constitutional right which has been violated can be pleaded in any court.

Again, the testimony excluded by the court and made the ground of the last specification of error was properly excluded. (Record, p. 90.)

It was not within the province of a hearing on *habeas corpus*. Appellant's argument proceeds upon the unsound doctrine that the question of guilt or innocence could be entered into on this hearing, when it is clear that the *only* question before the Court—if it were possible to raise it at this time and place—was whether he was *charged with a crime in the demanding* State.

The charge of crime, if properly made, stands unimpeached on the merits in a hearing on *habeas corpus*. If properly made and certified, he must be extradited. Whether guilty or innocent his final trial must determine.

Upon the final proposition, that there is a right of return before he can be put upon trial for other offenses, should this Court find it necessary or deem it advisable to pass upon the question we desire to contend most strenuously that there is no limitation or restriction upon the crime for

which a man may be extradited in interstate rendition; that duty is equally imperative as to *all crimes;* that no right of return is provided for or necessarily implied; that there is no right in the surrendering State to grant asylum or to impose terms or limitations, and that the doctrine here contended for tends to subvert and obstruct the plain meaning and purpose of the constitutional and legislative provisions, and while the authorities are not harmonious we think the weight of reason and authority sustains our position.

2 Moore Extradition, secs. 643–'4.
In re Noyes, U. S. Dist. C't, N. J., 17 Alb. L. J., 407.
Ham *vs.* State, 4 Tex. App., 645.
Harland *vs.* Territory of Washington, 3 Struve, 153.
Dow's case, 18 Penn. St., 39.
State *vs.* Stewart, 60 Wis., 587.
Ex parte Barker, 11 Crim. Law Mag., 623; 6 So. Rep., p. 7.
Williams *vs.* Weber, 28 Pac. Rep., 21.
State *vs.* Brewster, 7th Vt., 120.
Adriance *vs.* La Grave, 59 N. Y., 110.
U. S. *vs.* Caldwell, 8 Blatchford, 133.
U. S. *vs.* Lawrence, 13 Blatchford, 299–307.
People *vs.* Rowe, 4 Park Cr. Rep., 253.
In re Miles, 52 Vt., 609.
Mahon *vs.* Justice, 127 U. S., 700–707.
Ker *vs.* Illinois, 119 U. S., 436.

We respectfully contend that the order of the circuit court herein should be affirmed upon all the grounds stated and its enforcement provided for by this honorable Court.

W. C. Williams,
For Appellee.